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ANNUAL REPORT

21270

OF THE

AMERICAN HISTORICAL ASSOCIATION

FOR

THE YEAR 1894.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1895.

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LETTER OF SUBMITTAL.

SMITHSONIAN INSTITUTION,
Washington, D. C., March 2, 1895.

To the Congress of the United States:

In accordance with the act of incorporation of the American Historical Association, approved January 4, 1889, I have the honor to submit to Congress the annual report of said association for the year 1894.

I have the honor to be, very respectfully, your obedient servant,

S. P. LANGLEY,
Secretary of the Smithsonian Institution.

Hon. ADLAI E. STEVENSON,
President of the Senate.

Hon. CHARLES F. CRISP,
Speaker of the House.

LETTER OF TRANSMITTAL.

AMERICAN HISTORICAL ASSOCIATION,
Washington, D. C., March 2, 1895.

SIR: In compliance with the act of incorporation of the American Historical Association, approved January 4, 1889, which requires that "said association shall report annually to the Secretary of the Smithsonian Institution concerning its proceedings and the condition of historical study in America," I have the honor to transmit herewith my general report of the proceedings of the decennial of the American Historical Association, held in Washington, D. C., December 26–28, 1894. The accompanying table of contents contains the titles of the various papers read or presented. I append to the report of the association further contributions toward a bibliography of American history.

Very respectfully,

HERBERT B. ADAMS,
Secretary.

Prof. S. P. LANGLEY,
Secretary of the Smithsonian Institution.

ACT OF INCORPORATION.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Andrew D. White, of Ithaca, in the State of New York; George Bancroft, of Washington, in the District of Columbia; Justin Winsor, of Cambridge, in the State of Massachusetts; William F. Poole, of Chicago, in the State of Illinois; Herbert B. Adams, of Baltimore, in the State of Maryland; Clarence W. Bowen, of Brooklyn, in the State of New York, their associates and successors, are hereby created, in the District of Columbia, a body corporate and politic, by the name of the American Historical Association, for the promotion of historical studies, the collection and preservation of historical manuscripts, and for kindred purposes in the interest of American history and of history in America. Said association is authorized to hold real and personal estate in the District of Columbia so far only as may be necessary to its lawful ends to an amount not exceeding five hundred thousand dollars, to adopt a constitution, and to make by-laws not inconsistent with law. Said association shall have its principal office at Washington, in the District of Columbia, and may hold its annual meetings in such places as the said incorporators shall determine. Said association shall report annually to the Secretary of the Smithsonian Institution concerning its proceedings and the condition of historical study in America. Said Secretary shall communicate to Congress the whole of such reports, or such portions thereof as he shall see fit. The Regents of the Smithsonian Institution are authorized to permit said association to deposit its collections, manuscripts, books, pamphlets, and other material for history in the Smithsonian Institution or in the National Museum at their discretion, upon such conditions and under such rules as they shall prescribe.

Approved, January 4, 1889.

CONSTITUTION.

I.

The name of this society shall be The American Historical Association.

II.

Its object shall be the promotion of historical studies.

III.

Any person approved by the executive council may become a member by paying three dollars; and after the first year may continue a member by paying an annual fee of three dollars. On payment of fifty dollars any person may become a life member exempt from fees. Persons not residents in the United States may be elected as honorary members, and be exempt from the payment of fees.

IV.

The officers shall be a president, two vice-presidents, a secretary, an assistant secretary, a curator, a treasurer, and an executive council consisting of the foregoing officers and of four other members elected by the association, with the ex-presidents of the association. These officers shall be elected by ballot at each regular annual meeting of the association.

V.

The executive council shall have charge of the general interests of the association, including the election of members, the calling of meetings, the selection of papers to be read, and the determination of what papers shall be published.

VI.

This constitution may be amended at any annual meeting, notice of such amendment having been given at the previous annual meeting, or the proposed amendment having received the approval of the executive council.

AMERICAN HISTORICAL ASSOCIATION.

Organized at Saratoga, N. Y., September 10, 1884.

OFFICERS FOR 1895.

President:

Hon. GEORGE F. HOAR,
Worcester, Mass.

Vice-Presidents:

Rev. RICHARD S. STORRS, D. D.,
Brooklyn, N. Y.

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Secretary:

HERBERT B. ADAMS, Ph. D., LL. D.,
Professor of History, Johns Hopkins University, Baltimore, Md.

Assistant Secretary and Curator:

A. HOWARD CLARK,
Smithsonian Institution, Washington, D. C.

Treasurer:

CLARENCE WINTHROP BOWEN, Ph. D.,
130 Fulton street, New York.

Executive Council:

(In addition to the above-named officers.)

Hon. ANDREW D. WHITE, LL. D., L. H. D.,
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JUSTIN WINSOR, LL. D.,
Cambridge, Mass.

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HENRY ADAMS,
Washington, D. C.

G. BROWN GOODE, Ph. D., LL. D.,
Assistant Secretary of the Smithsonian Institution, in charge of the National Museum.

GEORGE B. ADAMS,
Professor of History, Yale University.

Hon. THEODORE ROOSEVELT,
New York City, N. Y.

Hon. J. L. M. CURRY,
Washington, D. C.

Dr. Poole were ex-presidents. Bibliographies of the writings of these distinguished members are printed in the Report for 1889.

Rossiter Johnson, of New York City, presented an incisive and critical paper on "Turning points in the American civil war." These were (1) Kentucky's refusal to secede, which deprived the Confederates of the natural line of defense along the Ohio; (2) the battle of Bull Run, which confirmed the Southern people in their belief in their superior prowess and certainty of success; (3) the emancipation proclamation, which placed the struggle on its true issue; (4) the battle of Gettysburg, which ended any hope of carrying the war into the North; (5) the reelection of President Lincoln, which decided that there should be no cessation of hostilities till the Confederacy ceased to exist.

Mrs. Lee C. Harby, of New York, discussed in the morning session at the National Museum "The Tejas: Their habits, government, and superstitions." George Parker Winship, of Harvard University, explained why Coronado went to New Mexico in 1540. Prof. Bernard Moses, of the University of California, presented a scholarly monograph on the Casa de Contratacion of Seville, a body created in 1503 for the control of the economical affairs of Spanish America, which was like the East India House in English administration. Dr. Walter B. Scaife, of Allegheny, Pa., explained some European modifications of the jury system. He showed that the jury system was introduced on the Continent by the French Revolution, but for criminal matters only. The Code Napoleon retained it, but required merely a majority vote for the verdict, and abolished the jury of accusation, which corresponded to our grand jury, and which never since has found a footing either in France or the neighboring countries. Instead, the preliminary investigation is conducted by a judge of examination, who generally acts in secret, though the Swiss Canton of Zurich already admits the accused with his counsel to all stages of the process. A movement to secure the same right is on foot in Germany.

Prof. John S. Bassett, of Trinity College, Durham, N. C., presented a new view of the regulators of North Carolina (1766–1771). The uprising was merely a popular tumult, like the uprising of discontented peasants against their lords. It was due to economic and political causes, but it was not an attempted revolution against Great Britain. Prof. Frank W.

Blackmar, of the University of Kansas, sketched the life of Charles Robinson, the first governor of that State. He appears to have been the most important influence in upbuild ing the Commonwealth of Kansas; more prominent, indeed, than John Brown or James H. Lane. Dr. Herbert Friedenwald, of Philadelphia, called attention to a neglected portion of American Revolutionary history, or to the voluminous and unused papers of the Continental Congress. Thus far only the military, diplomatic, and financial affairs of the old Congress have been investigated. Other matters are worthy of historical study in this connection; for example, methods of Congressional procedure, economic relations, and modes of supplying the army. Of special interest are the reports of committees, as well as the journals and correspondence of the Continental Congress.

In his paper on the origin and development of the labor movement in national and municipal politics in England, Mr. Edward Porritt showed that the outstanding fact is that the labor movement began in Parliament and worked downward into municipal politics. Labor representation in the House of Commons dates back to 1874, while labor representation in town and county councils is a much more recent development of the movement, dating back only to 1889. The parliamentary movement had its beginnings before the working classes were enfranchised. Workingmen living in the towns first exercised the parliamentary vote in 1868; those living in the rural districts, in 1885. In 1867, however, a royal commission was appointed to inquire into the organization and conduct of trade unions, and the appointment of this commission led to the appointment by the trade unionists of a representative national committee, which subsequently developed into the organization now known as the Trade Union Congress. It took this name in 1868, and the following year, at the congress held in Birmingham, labor representation in Parliament first became a definite policy of the trade-unionists. At the general election in 1868 two trade-union leaders unsuccessfully sought seats in the House of Commons, and it was not until the general election in 1874 that trade-unionists were elected to Parliament. The first representatives of labor in the House of Commons were those sent there by the miners of Northumberland and Staffordshire. The miners were the first to take advantage of the reform act passed in 1868; and they

also, more generally than any other trade-unionists, took advantage of the reform act of 1884. This activity on the part of the miners is accounted for by the fact that they are in much closer and more frequent contact with the law than any other workmen, and that in many of the constituencies on the great coal fields the miners are the dominating force in the electorate. In these constituencies the parliamentary candidate who secures the unanimous support of the miners is certain of election. Since the Trade Union Congress in 1869 first declared in favor of the representation of labor in the House of Commons, five Parliaments have been elected. In the first there were 2 labor members; in the second there were 3; in the third there were 10; in the fourth there were 12, and in the fifth there are 16. Mr. Porritt next traced the legislation in behalf of labor which has been passed since 1868, and indicated the effect the labor representation and the labor vote have had on the programmes of both political parties. With regard to municipal politics, the labor policy has been formulated since 1889. So far the labor party has principally confined itself in municipal politics to demands for the establishment of municipal workshops; for an eight-hour day for municipal work people; the abolition of the contract system in all public works; remunerative work for the unemployed, and reduction of the salaries of the legal, engineering, and clerical staffs in the municipal service, and to attempts to compel school boards and town councils to usurp many of the functions and duties which Parliament has, since 1834, imposed on the boards of guardians for the relief of the poor.

At the close of the first morning session Prof. William A. Dunning, of Columbia College, gave a rapid review of American political philosophy. He said the thoughts of the colonial theorists were but the familiar doctrines of the English revolution. Jefferson embodied in the Declaration of Independence the philosophy of all Europe in the eighteenth century, and his leading idea of human equality dates back to imperial Rome.

Tucker, of the Jeffersonian school, in his edition of Blackstone, transferred the principles of the current social contract theory of the State to the explanation of the United States Constitution, and thus became, in a measure, the founder of State sovereignty as a philosophical dogma. Calhoun defended it, however, on different grounds. His "Disquisition on government" is a valuable essay in political philosophy. Francis

Lieber was the first American writer to make a near approach to speculation both broad and systematic, but his civil liberty is rather more in the field of ethics than of politics. Woolsey followed Lieber, but with a theological leaning. The convulsions of our civil war brought out much political literature. Hurd and Draper philosophized on the lines of Austin and Buckle. Brownson wrote cleverly from the standpoint of the Roman Catholic Church. Mulford reproduced the doctrines of Hegel and Stahl. More satisfactory and more original work has been done by J. A. Jameson and John W. Burgess, combining the historical and the juristic method, and in them is to be found the nearest approach as yet to a distinctly American school.

At the Thursday evening session Professor Emerton, of Harvard University, read a paper on "The papal and imperial electoral colleges." It was a brief review of the problem of the origin of the German institution, especially as influenced by the papacy. The writer thought that the German electorate could best be studied by the analogy of the Roman college of cardinals. Prof. E. G. Bourne, of Adelbert College, presented the paper of his brother, Prof. Henry E. Bourne, of the Cleveland College for Women, on "The first committee of public safety: Its organization, policy, and fall." He ascribed the rise of the committee of public safety in France to the crisis in domestic and foreign politics in April, 1793.

Prof. Charles H. Haskins, of the University of Wisconsin, read the paper of his colleague, Prof. Victor Coffin, on "The Quebec bill and the American Revolution." The writer maintained that the provisions of the Quebec act were not caused by the position of affairs in the other American colonies, but were in accordance with the previous conduct of Canadian affairs, and were advocated to the ministry on grounds apart from colonial quarrels. Prof. Richard Hudson, of the University of Michigan, read a careful study of the German Emperor, considered institutionally.

A group of excellent papers was read at the Friday morning session in the National Museum on "Rhode Island history." Harold D. Hazeltine, a graduate of Brown University, ably discussed the "Appeals from Rhode Island courts to the King in council." The English privy council was the predecessor of our Supreme Court, and consequently the history of appeals made to the English tribunal from Rhode Island is an important

contribution to the study of institutions. Frank Greene Bates, of Cornell University, read a valuable paper upon "Rhode Island and the impost of 1781." He explained Rhode Island's opposition to this impost as based upon the idea of State rights. Arthur May Mowry, of Harvard University, intelligently reviewed the constitutional controversy in Rhode Island in 1841, and the famous Dorr rebellion. Samuel B. Harding, of Harvard University, described the party struggles over the Pennsylvania constitution from 1775 to 1790. His object was to show that the cause of the extreme opposition manifested in Pennsylvania to the new Federal Constitution was to be found in State factions. S. M. Sener, of Lancaster, Pa., described in a familiar way the language, manners, and customs of the Pennsylvania Germans. James A. Wilgus, of the Ohio State University, made a substantial contribution to the history of township government in Ohio. Prof. A. C. McLaughlin, of the University of Michigan, closed the last session in the National Museum by an excellent discussion of the retention of the western posts by the British after 1783. The paper was printed in the Yale Review, February, 1895.

The first paper read at the closing session of the tenth annual convention was on "Mountains and history," by Prof. Edmund K. Alden, of Packer Institute, Brooklyn. He called attention to the increasing importance of the study of topography as related to history. He surveyed the historic mountain groups of the world, and illustrated their influence in various ways. He emphasized the value of mountaineering to historical students. Many of the complex questions of early Roman history can be better understood by a study of Italian topography than by work over Livy in libraries. Another valuable paper was that by Prof. A. D. Morse, of Amherst College, on the "Causes and consequences of the party revolution of 1800." The writer maintained that while Federalist quarrels and the impolitic legislation of 1798, together with the Virginia and Kentucky resolutions, explained why the revolution took place in 1800 rather than later, and may be termed justly the immediate causes which produced that event, the underlying cause is to be found in the fact that the Federalists had finished the work which they could do for the United States, while for the tasks of the period the Republicans had a greater aptitude. The most important consequence of the revolution was the impulse which it gave to the development of a national and

American character through making the party which represented the people most fully responsible for the national welfare. The paper of Prof. James H. Robinson, of the University of Pennsylvania, on "The tennis court oath," in the absence of the author, was read by title.

An interesting feature of the closing session was a spirited impromptu address by Prof. H. Morse Stephens, an Oxford graduate, who was recently elected to succeed Prof. Herbert Tuttle in the chair of modern history in Cornell University. Mr. Stephens is the author of a scholarly and readable history of the French Revolution, a work which has attracted marked attention in this country, as well as in Europe, and undoubtedly led to Mr. Stephens's call to Ithaca. He spoke for a half hour upon the Oxford school of history and its chief representatives, Professors Stubbs, Freeman, Froude, and York-Powell. Stubbs laid down the lines which the Oxford school still follows. He put great stress upon the study of English constitutional and political history. He required also the special study of some great period of foreign history, and the special use of original sources. Political philosophy, political economy, and geography were additional features of the Oxford school of history. Mr. Stephens said that the greatest sin Gladstone ever committed was in making Stubbs a bishop, for there is always abundant material in England for bishops, but there is only one Stubbs.

Mr. Stephens's comments upon Professor Freeman were very amusing. Freeman disliked teaching, and deliberately fixed his lecture hour at 4 o'clock in the afternoon, when Oxford undergraduates are usually upon the river or playing cricket. Freeman's class seldom numbered more than one, and with him the old historian often went to walk at the lecture hour. Mr. Winsor afterwards capped Mr. Stephens's stories by telling of a visit to Freeman's house in Oxford, where the historian was found with his class of one and his two daughters throwing bean bags in the front hall. When Froude came to Oxford the Freemanites shrieked; but Froude immediately became popular with the undergraduates, to whom he lectured at convenient hours upon such stirring themes as English seamen of the Elizabethan age. Young Oxford became very proud of him, and his audiences rivaled those of John Ruskin in former years. Froude's very faults drew attention to his literary merits. Professor York-Powell has been chosen as Froude's successor.

York-Powell thoroughly understands the principles of the Oxford school of history, and will maintain them. He was a stanch friend and supporter of Professor Freeman, whom he relieved of many burdensome administrative duties, such as sitting on academic boards. York-Powell began his scientific career as a special student of Icelandic literature, but has edited a series of books on English history, based upon original sources. Many people have wondered why Samuel Rawson Gardiner was not chosen to be Froude's successor. Mr. Stephens intimated that Gardiner had expressed his aversion to academic teaching, and preferred to continue his own historical work.

A paper on "The historical archives of the State Department" was presented by Andrew Hussey Allen, chief of the Bureau of Rolls and Library. The paper was designed to correct certain popular misapprehensions concerning the accessibility of historical manuscripts now in the possession of the Department of State. After describing the character and contents of the various collections belonging to the Government, Mr. Allen proceeded to notice and refute certain charges that had been made against the library of the State Department. He referred to the published report of Dr. W. F. Poole's remarks at the Chicago meeting of the association, and reconsidered each specific point, giving positive evidence that the State Department had arranged, classified, and calendared its manuscripts. With regard to making them accessible, the Department is doing everything permitted by its resources. Since 1893 it has published four bulletins: (1) A catalogue of the papers of the Continental Congress, with a miscellaneous index and a documentary history of the Constitution; (2) a calendar of the correspondence of James Monroe; (3) the arrangement of the Washington Papers, with a miscellaneous index and documentary history of the Constitution; (4) a calendar of the correspondence of James Madison. Mr. Allen said the objects of the Historical Association can be better served by the exercise of its influence for legislative action providing for the preservation and publication of state papers than by the suggestion or promotion of measures looking to the erection of a hall of records. Access will continue to be accorded without special favor and with no further discrimination of individuals than that involved in the necessary ascertainment of the carefulness, responsibility, and good faith of the investigator.

An encouraging paper was read by A. Howard Clark, of the Smithsonian Institution, on "What the United States Government has done for history." He said that the Government had spent more than $2,000,000 in the acquisition and publication of historical records, and had spent many millions more in the erection of monuments and in the celebration of historical events. The United States Government is now annually expending more than a quarter of a million dollars directly in behalf of American history. No nation ever undertook such a magnificent historical work as is now approaching completion under charge of efficient bureaus in the War and Navy Departments. Mr. Clark reviewed the patriotic work of Peter Force, who brought together a storehouse of information concerning colonial and Revolutionary history. Under his direction the United States Government published 9 folio volumes of American archives, but the work encountered some opposition and was suspended. In 1867 he sold to the United States all his papers and manuscripts, which afford materials for 30 volumes covering our history from 1775 until 1789, when the series of State papers begin, with the records of the first Congress under the Constitution. Mr. Clark called attention to the editorial labors of Jared Sparks and Dr. Francis Wharton, to the various historical collections now in possession of the Government, and to the importance of obtaining other collections now in private hands.

One of the most important acts of the United States Government in behalf of history was the incorporation of The American Historical Association by act of Congress, approved January 4, 1889, "for the promotion of historical studies, the collection and preservation of historical manuscripts, and for kindred historical purposes in the interest of American history and of history in America." Congress requires from the association an annual report concerning its proceedings and the condition of historical study in America. It is the duty of the association to do for history in America what the National Academy has for many years done for natural science. Through the Historical Association the United States Government is brought into touch with every State and local historical society. One of the most valuable publications of the association is its exhaustive bibliography, prepared by an expert, Mr. A. P. C. Griffin, of the published works of all the prominent historical societies in this country, a bibliography including nearly 10,000

titles. During its first decade the association has published 10 volumes of "Papers" and "Reports," aggregating 5,192 pages of valuable historical matter. One-half of it has been issued under the auspices of the United States Government.

Mr. Clark said that the real national work of the association had just begun. Through appointed committees the association can secure valuable information concerning historical manuscripts, and submit the same in copied form to Congress for publication in connection with our annual reports. Information can be furnished to the whole country concerning the historical work of colleges and universities and of the 250 historical societies. The time may be at hand, said Mr. Clark, for this association to prepare a complete, classified, and fully indexed analytical bibliography of all works in manuscript or print, in English or in foreign tongues, concerning the history of America.

Among the members present at the tenth annual meeting of the American Historical Association were the following: Prof. George B. Adams, of Yale University; Prof. Herbert B. Adams, of Johns Hopkins University; Dr. Cyrus Adler, of Smithsonian Institution; Prof. Edmund K. Alden, of Packer Institute, Brooklyn; Andrew Hussey Allen, chief of Bureau of Rolls and Library, Department of State, Washington, D. C.; Rev. Wm. G. Andrews, of Guilford, Conn.; K. C. Babcock, of Cambridge, Mass.; Dr. Frederic Bancroft, of Washington, D. C.; Prof. J. S. Bassett, of Trinity College, Durham, N. C.; Prof. F. W. Blackmar, of University of Kansas; Prof. Edward G. Bourne, of Adelbert College, Cleveland, Ohio; Dr. C. W. Bowen, of The Independent, New York City; Prof. Marshall S. Brown, of University of the City of New York; Prof. George L. Burr, of Cornell University; Miss A. M. Chamberlain, of Washington, D. C.; A. Howard Clark, of Smithsonian Institution; Mendes Cohen, of Baltimore, Md.; W. V. Cox, of United States National Museum; Wm. E. Curtis, of Washington, D. C.; Prof. Wm. A. Dunning, of Columbia College; Hon. John Eaton, of Washington, D. C.; Prof. E. Emerton, of Harvard University; Prof. Henry Ferguson, of Trinity College, Hartford, Conn.; Col. Weston Flint, of Washington, D. C.; Dr. Herbert Friedenwald, of Philadelphia; Dr. G. Brown Goode, of Smithsonian Institution; Mrs. Lee C. Harby, of New York City; Samuel B. Harding, of Cambridge, Mass.; Prof. Charles H. Haskins, of University of Wisconsin; Harold D. Hazeltine, of Warren, Pa.;

Prof. J. B. Henneman, of University of Tennessee, Knoxville; Prof. Richard Hudson, of University of Michigan; J. B. Johnson, secretary Howard University, Washington, D. C.; Miss E. B. Johnston, of Washington, D. C.; Hon. Horatio King, of Washington, D. C.; Walter I. Lowe, of New Haven, Conn.; Prof. A. C. McLaughlin, of University of Michigan; Prof. A. D. Morse, of Amherst College; Arthur May Mowry, of Harvard University; Frank K. Murphy, of Baltimore, Md.; Judge Charles A. Peabody, of New York City; Philip G. Peabody, of Boston, Mass.; Hon. O. H. Platt, of United States Senate; Prof. L. M. Salmon, of Vassar College, Poughkeepsie, N. Y.; S. M. Sener, of Lancaster, Pa.; Dr. B. C. Steiner, Baltimore, Md.; Prof. H. C. Stanclift, of Northwestern University, Evanston, Ill.; Prof. H. Morse Stephens, of Cornell University; Dr. J. M. Vincent, of Johns Hopkins University; President E. D. Warfield, of Lafayette College, Easton, Pa.; Dr. Stephen B. Weeks, of Bureau of Education, Washington, D. C.; James A. Wilgus, of Columbus, Ohio; George Parker Winship, of Cambridge, Mass.; Gen. James Grant Wilson, of New York City, and Dr. Justin Winsor, of Harvard University.

RESOLUTIONS.

The committee on resolutions reported the following; which were unanimously adopted:

Resolved, That the thanks of The American Historical Association be given to the officers and regents of the Smithsonian Institution for the courtesies shown during this meeting, and especially for the use of the room in which the morning sessions have been held.

Resolved, That the thanks of this association be given to the Columbian University for its hospitable entertainment and for the use of the room in which the evening meetings have been held.

Resolved, That the thanks of this association be given to the managers of the Cosmos Club for their kindness in extending to the members of this association the privileges of their club.

Resolved, That this association express to the Columbian University its sense of loss in the death of its late president, James C. Welling, LL. D., who for so many years represented the university in its hospitable kindness to this association, and by his interest, labors, and courtesy contributed so much to the pleasure and profit of previous meetings in the city of Washington.

Resolved, That the thanks of the members in attendance upon the tenth annual meeting of this association be extended to our honored ex-president of the association, who has again shown his loyalty to the association by so faithfully and graciously performing the duties of the presidential office.

E. D. WARFIELD,
GEORGE P. WINSHIP.

EXECUTIVE COUNCIL.

A meeting of the executive council of The American Historical Association was held December 28, 1894, in the office of Dr. G. Brown Goode, at the United States National Museum. Present, Messrs. Justin Winsor, G. Brown Goode, George B. Adams, Herbert B. Adams, A. Howard Clark. Mr. Winsor was made chairman of the meeting. It was voted that the following committee, appointed by the chair, should memorialize Congress to institute an historical manuscripts commission: Justin Winsor, chairman; Messrs. James B. Angell, George B. Adams, Herbert B. Adams, and A. Howard Clark. A committee of five was appointed by the chair to consider the question of printing more elaborate monographs supplementary to the annual report—Messrs. Herbert B. Adams, George B. Adams, William A. Dunning, A. C. McLaughlin, and James Schouler. It was voted to expend a sum not exceeding $500 in securing systematic bibliographies representing the progress and condition of American historical science.

The American Historical Association, in account with Clarence W. Bowen, Treasurer.

1893				1893		
July 24	Paid Jno. Murphy & Co., voucher 1	$8 88		July 6	By balance from last account	$90 95
Sept. 28	The Independent Press, voucher 2	25 30		1894		
Oct. 9	The Independent Press, voucher 3	2 50		Jan. 31	A. Howard Clark, publications	294 00
1894				Feb. 1	G. P. Putnam's Sons	37 50
Jan. 8	H. S. Chandler, voucher 4	150 00		2	Interest on bond and mortgage	125 00
22	The Independent Press, voucher 5	14 40		July 5	Interest on bond and mortgage	125 00
31	A. H. Clark, for year 1893, voucher 6	205 00		Dec. 26	Sundry persons, for publications and binding	148 23
Feb. 6	John Murphy & Co., voucher 7	8 75			4 life memberships, at $50	200 00
	John Murphy & Co., voucher 8	4 00			882 annual dues, at $3	2,496 00
12	Guggenheimer, Weil & Co., voucher 9	65 75				
Mar. 12	A. H. Clark, voucher 10	25 00				
14	Dobler & Mudge, voucher 11	264 00				
	The Independent, voucher 12	98				
Apr. 12	Guggenheimer, Weil & Co., voucher 13	27 25				
	The Independent, voucher 14	1 00				
13	H. B. Adams, voucher 15	100 00				
May 8	H. S. Chandler, advertising, voucher 16	6 00				
12	Jno. Campbell & Co., voucher 17	8 00				
	A. H. Clark, voucher 18	57 50				
22	C. S. Christianson, voucher 19	10 00				
June 8	Public Printer, voucher 20	334 20				
Aug. 2	The Independent Press, voucher 21	10 18				
Sept. 5	J. B. Manning, voucher 22	800 00				
10	The Independent, voucher 23	23 80				
13	A. H. Clark, voucher 24	25 00				
17	Dobler & Mudge, voucher 25	281 84				
Oct. 8	Public Printer, voucher 26	404 77				
31	Public Printer, voucher 27	4 78				
Dec. 20	H. B. Adams, voucher 28	50 00				
21	Grace Potter, voucher 29	1 50				
26	Cash on hand and in bank	440 61				
		3,446 68				3,446 68
				1894.		
				Dec. 26	By balance	440 61

I have to state that my report covers the period from the last annual meeting of the association, July, 1893, to the present. The association's invested assets have been increased by the purchase of 5 shares of the National Bank of Commerce of New York. The assets of the association are: Bond and mortgage, drawing 5 per cent interest, $5,000; 5 shares National Bank of Commerce, $800; cash, $440 61; total assets, $6,330 61; an increase over amount reported July, 1893, of $1,300 66.

Respectfully submitted,

CLARENCE W. BOWEN, *Treasurer.*

F. W. BLACKMAR.
PHILIP G. PEABODY.

Audited and found correct.
WASHINGTON, D. C., *December 2., 1894.*

LIST OF COMMITTEES, 1894-95.

1. *Auditing committee:* Frank W. Blackmar and Philip G. Peabody.
2. *Finance:* Hon. John A. King, Robert Schell, and Clarence W. Bowen.
3. *Nominations:* Charles A. Peabody, E. G. Bourne, and Henry Ferguson.
4. *Time and place of meeting:* James Grant Wilson and A. Howard Clark.
5. *Programme:* George F. Hoar, H. P. Judson, Charles Gross, George L. Burr, and H. B. Adams
6. *Resolutions:* E. D. Warfield and George P. Winship.

OFFICERS FOR 1894-95.

President: Hon. George F. Hoar, Worcester, Mass.

Vice-Presidents: Rev. Richard S. Storrs, D. D., Brooklyn, N. Y.; Dr. James Schouler, professor in the Boston University, Massachusetts.

Treasurer: Clarence W. Bowen, Ph. D., 130 Fulton street, New York City.

Secretary: Herbert B. Adams, Ph. D., LL. D., professor in the Johns Hopkins University, Baltimore, Md.

Assistant secretary and curator: A. Howard Clark, Smithsonian Institution, Washington, D. C.

Executive council (in addition to the above-named officers): Hon. Andrew D. White, LL. D., Ithaca, N. Y.; Dr. Justin Winsor, Cambridge, Mass., Charles Kendall Adams, LL. D., president of the University of Wisconsin; Hon. William Wirt Henry, Richmond, Va.; James B. Angell, LL. D., president of the University of Michigan; Henry Adams, esq., Washington, D. C.; G. Brown Goode, Ph. D., LL. D., Smithsonian Institution, Washington, D. C.; George B. Adams, professor of history in Yale University; Hon. Theodore Roosevelt, New York City, N. Y.; Hon. J. L. M. Curry, Washington, D. C.

II.—THE TENDENCY OF HISTORY.

Communication from HENRY ADAMS, President of the Association.

GUADA'-C-JARA, *December 12, 1894.*

DEAR SIR: I regret extremely that constant absence has prevented me from attending the meetings of the Historical Association. On the date which your letter mentions as that of its first decennial I shall not be within reach. I have to ask you to offer my apology to the members, and the assurance that at that moment I am believed to be somewhere beyond the Isthmus of Panama. Perhaps this absence runs in some of the mysterious ways of nature's law, for you will not forget that when you did me the honor to make me your president I was still farther away—in Tahiti or Fiji, I believe—and never even had an opportunity to thank you. Evidently I am fitted only to be an absent president, and you will pardon a defect which is clearly not official, but a condition of the man.

I regret this fault the more because I would have liked to be of service, and perhaps there is service that might be usefully performed. Even the effort to hold together the persons interested in history is worth making. That we should ever act on public opinion with the weight of one compact and one energetic conviction is hardly to be expected, but that one day or another we shall be compelled to act individually or in groups I can not doubt. With more anxiety than confidence, I should have liked to do something, however trifling, to hold the association together and unite it on some common ground, with a full understanding of the course which history seems destined to take and with a good-natured willingness to accept or reject the result, but in any case not to quarrel over it.

No one who has watched the course of history during the last generation can have felt doubt of its tendency. Those of us who read Buckle's first volume when it appeared in 1857,

and almost immediately afterwards, in 1859, read the Origin of Species and felt the violent impulse which Darwin gave to the study of natural laws, never doubted that historians would follow until they had exhausted every possible hypothesis to create a science of history. Year after year passed, and little progress has been made. Perhaps the mass of students are more skeptical now than they were thirty years ago of the possibility that such a science can be created. Yet almost every successful historian has been busy with it, adding here a new analysis, a new generalization there; a clear and definite connection where before the rupture of idea was absolute; and, above all, extending the field of study until it shall include all races, all countries, and all times. Like other branches of science, history is now encumbered and hampered by its own mass, but its tendency is always the same, and can not be other than what it is. That the effort to make history a science may fail is possible, and perhaps probable; but that it should cease, unless for reasons that would cause all science to cease, is not within the range of experience. Historians will not, and even if they would they can not, abandon the attempt. Science itself would admit its own failure if it admitted that man, the most important of all its subjects, could not be brought within its range.

You may be sure that four out of five serious students of history who are living to-day have, in the course of their work, felt that they stood on the brink of a great generalization that would reduce all history under a law as clear as the laws which govern the material world. As the great writers of our time have touched one by one the separate fragments of admitted law by which society betrays its character as a subject for science, not one of them can have failed to feel an instant's hope that he might find the secret which would transform these odds and ends of philosophy into one self-evident, harmonious, and complete system. He has seemed to have it, as the Spanish say, in his inkstand. Scores of times he must have dropped his pen to think how one short step, one sudden inspiration, would show all human knowledge how, in these thickset forests of history, one corner turned, one faint trail struck, would bring him on the highroad of science. Every professor who has tried to teach the doubtful facts which we now call history must have felt that sooner or later he or another would put order in the chaos and bring light into

darkness. Not so much genius or favor was needed as patience and good luck. The law was certainly there, and as certainly was in places actually visible, to be touched and handled, as though it were a law of chemistry or physics. No teacher with a spark of imagination or with an idea of scientific method can have helped dreaming of the immortality that would be achieved by the man who should successfully apply Darwin's method to the facts of human history.

Those of us who have had occasion to keep abreast of the rapid progress which has been made in history during the last fifty years must be convinced that the same rate of progress during another half century would necessarily raise history to the rank of a science. Our only doubt is whether the same rate can possibly be maintained. If not, our situation is simple. In that case, we shall remain more or less where we are. But we have reached a point where we ought to face the possibility of a great and perhaps a sudden change in the importance of our profession. We can not help asking ourselves what would happen if some new Darwin were to demonstrate the law or the laws of historical evolution.

I admit that the mere idea of such an event fills my mind with anxiety. When I remember the astonishing influence exerted by a mere theorist like Rousseau; by a reasoner like Adam Smith; by a philosopher, beyond contact with material interests, like Darwin, I can not imagine the limits of the shock that might follow the establishment of a fixed science of history. Hitherto our profession has been encouraged, or, at all events, tolerated by governments and by society as an amusing or instructive and, at any rate, a safe and harmless branch of inquiry. But what will be the attitude of government or of society toward any conceivable science of history? We know what followed Rousseau; what industrial and political struggles have resulted from the teachings of Adam Smith; what a revolution and what vehement opposition has been and still is caused by the ideas of Darwin. Can we imagine any science of history that would not be vastly more violent in its effects than the dissensions roused by anyone or by all three of these great men?

I ask myself, What shape can be given to any science of history that will not shake to its foundations some prodigious interest? The world is made up of a few immense forces, each with an organization that corresponds with its strength. The

church stands first; and at the outset we must assume that the church will not and can not accept any science of history, because science, by its definition, must exclude the idea of a personal and active providence. The state stands next; and the hostility of the state would be assured toward any system or science that might not strengthen its arm. Property is growing more and more timid and looks with extreme jealousy on any new idea that may weaken vested rights. Labor is growing more and more self-confident and looks with contempt on all theories that do not support its own. Yet we can not conceive of a science of history that would not, directly or indirectly, affect all these vast social forces.

Any science assumes a necessary sequence of cause and effect, a force resulting in motion which can not be other than what it is. Any science of history must be absolute, like other sciences, and must fix with mathematical certainty the path which human society has got to follow. That path can hardly lead toward the interests of all the great social organizations. We can not conceive that it should help at the same time the church and the state, property and communism, capital and poverty, science and religion, trade and art. Whatever may be its orbit, it must, at least for a time, point away from some of these forces toward others which are regarded as hostile. Conceivably, it might lead off in eccentric lines away from them all, but by no power of our imagination can we conceive that it should lead toward them all.

Although I distrust my own judgment and look earnestly for guidance to those who are younger than I and closer to the movement of the time, I can not be wholly wrong in thinking that a change has come over the tendency of liberal thought since the middle of the century. Darwin led an intellectual revival much more hopeful than any movement that can now be seen in Europe, except among the socialists. Had history been converted into a science at that time it would perhaps have taken the form of cheerful optimism which gave to Darwin's conclusions the charm of a possible human perfectibility. Of late years the tone of European thought has been distinctly despondent among the classes which were formerly most hopeful. If a science of history were established to-day on the lines of its recent development I greatly fear it would take its tone from the pessimism of Paris, Berlin, London, and

St. Petersburg, unless it brought into sight some new and hitherto unsuspected path for civilization to pursue.

If it pointed to a socialistic triumph it would place us in an attitude of hostility toward existing institutions. Even supposing that our universities would permit their professors in this country to announce the scientific certainty of communistic triumphs, could Europe be equally liberal? Would property, on which the universities depend, allow such freedom of instruction? Would the state suffer its foundation to be destroyed? Would society as now constituted tolerate the open assertion of a necessity which should affirm its approaching overthrow?

If, on the other hand, the new science required us to announce that the present evils of the world—its huge armaments, its vast accumulations of capital, its advancing materialism, and declining arts—were to be continued, exaggerated, over another thousand years, no one would listen to us with satisfaction. Society would shut its eyes and ears. If we proved the certainty of our results we should prove it without a sympathetic audience and without good effect. No one except artists and socialists would listen, and the conviction which we should produce on them could lead only to despair and attempts at anarchy in art, in thought, and in society.

If, finally, the science should prove that society must at a given time revert to the church and recover its old foundation of absolute faith in a personal providence and a revealed religion, it commits suicide.

In whatever direction we look we can see no possibility of converting history into a science without bringing it into hostility toward one or more of the most powerful organizations of the era. If the world is to continue moving toward the point which it has so energetically pursued during the last fifty years, it will destroy the hopes of the vast organizations of labor. If it is to change its course and become communistic, it places us in direct hostility to the entire fabric of our social and political system. If it goes on, we must preach despair. If it goes back, it must deny and repudiate science. If it goes forward, round a circle which leads through communism, we must declare ourselves hostile to the property that pays us and the institutions we are bound in duty to support.

A science can not be played with. If an hypothesis is advanced that obviously brings into a direct sequence of cause

and effect all the phenomena of human history, we must accept it, and if we accept we must teach it. The mere fact that it overthrows social organizations can not affect our attitude. The rest of society can reject or ignore, but we must follow the new light no matter where it leads. Only about two hundred and fifty years ago the common sense of mankind, supported by the authority of revealed religion, affirmed the undoubted and self-evident fact that the sun moved round the earth. Galileo suddenly asserted and proved that the earth moved round the sun. You know what followed, and the famous "E pur si muove." Even if we, like Galileo, should be obliged by the religious or secular authority to recant and repudiate our science, we should still have to say as he did in secret if not in public, "E pur si muove."

Those of us who have reached or passed middle age need not trouble ourselves very much about the future. We have seen one or two great revolutions in thought and we have had enough. We are not likely to accept any new theory that shall threaten to disturb our repose. We should reject at once, and probably by a large majority, a hypothetical science that must obviously be incapable of proof. We should take the same attitude that our fathers took toward the theories and hypotheses of Darwin. We may meantime reply to such conundrums by the formula that has smoothed our path in life over many disasters and cataclysms: "Perhaps the crisis will never occur; and even if it does occur, we shall probably be dead." To us who have already gone as far as we set out to go, this answer is good and sufficient, but those who are to be the professors and historians of the future have got duties and responsibilities of a heavier kind than we older ones ever have had to carry. They can not afford to deal with such a question in such a spirit. They would have to rejoin in Heine's words:

> Also fragen wir beständig,
> Bis man uns mit einer Handvoll
> Erde endlich stopft die Mauler,
> Aber es lässt sie Antwort!

They may at any time in the next fifty years be compelled to find an answer, "Yes" or "No", under the pressure of the most powerful organizations the world has ever known for the suppression of influences hostile to its safety. If this association should be gifted with the length of life that we all wish

for it, a span of a century at least, it can hardly fail to be torn by some such dilemma. Our universities, at all events, must be prepared to meet it. If such a crisis should come, the universities throughout the world will have done most to create it, and are under most obligation to find a solution for it. I will not deny that the shadow of this coming event has cast itself on me, both as a teacher and a writer; or that, in the last ten years, it has often kept me silent where I should once have spoken with confidence, or has caused me to think long and anxiously before expressing in public any opinion at all. Beyond a doubt, silence is best. In these remarks, which are only casual and offered in the paradoxical spirit of private conversation, I have not ventured to express any opinion of my own; or, if I have expressed it, pray consider it as withdrawn. The situation seems to call for no opinion, unless we have some scientific theory to offer; but to me it seems so interesting that, in taking leave of the association, I feel inclined to invite them, as individuals, to consider the matter in a spirit that will enable us, should the crisis arise, to deal with it in a kindly temper, and a full understanding of its serious dangers and responsibilities.

Ever truly yours,

HENRY ADAMS.

HERBERT B. ADAMS, Esq.,
Secretary, etc., American Historical Association.

III.—RISE OF IMPERIAL FEDERALISM.

By Prof. GEORGE B. ADAMS, of Yale University.

The question of the relation of England to her colonies is one which has been long under discussion. Until very recently it has been discussed from one side only, and that a side presenting, as it would seem to Americans, unnecessary practical difficulties. The problem has been to devise methods by which a national government could be so extended as to make it an imperial government, administering the affairs of a wide empire. It is not strange that so difficult a problem has found no satisfactory solution in something more than a hundred and fifty years of discussion and experiment.

The American Revolution was the result of a clumsy experiment which is not likely to be repeated, but the result, instead of aiding the solution of the difficulty, seems to have hindered it. It seems to have led to the belief that the colonies were all destined to become independent; that as soon as they should become strong enough they would inevitably demand to be recognized as separate and autonomous nations, and that this must be granted them. This feeling was strengthened by a variety of circumstances between 1835 and 1870, like the Canadian rebellion, the granting of responsible government to a number of the larger colonies, the rapid development of Australia, and the trade theories of the Cobden school. In the decade between 1860 and 1870 unusual interest was excited in colonial questions by a conjunction of events, of which the most important were the supposed danger to Canada from the civil war in the United States, the Maori war in New Zealand, and a series of letters by Prof. Goldwin Smith, published in the Daily News in 1862, and immediately collected into a book called The Empire, which attracted much attention and which contained a vigorous and plausible argument in favor of the

dissolution of the Empire. But notwithstanding the continued growth of the belief in the ultimate independence of the colonies—in 1865 two prominent Englishmen suggested the adoption by Parliament of plans, which they published, by which the independence of a colony might be legally declared whenever it should wish—the country was somewhat startled to find in 1869–1870 that Mr. Gladstone's ministry was apparently on the verge of carrying this theory into practice and turning the larger colonies adrift without waiting for them to express a desire for independence. This was at least the result to which a large portion of the people of England believed the policy of the cabinet was tending.

The first definite suggestion of imperial federation as a method for the organization of the Empire was an outgrowth of the discussion which the Government's colonial policy excited at this time. The credit of this suggestion must be given to Mr. Edward Jenkins, the author of Ginx's Baby, who published an article entitled "Imperial federalism" in the January number of the Contemporary Review for 1871, and followed that with a second and still more definite article in the April number. In the colonial discussions of the preceding ten years there had been many passing references to the possibility of a federal organization for the Empire. What Mr. Jenkins did was to give greater definiteness and an air of practicality to what had been before merely a vague ideal. He performed also no slight service in bringing together two words which had been for a long time in separate use in colonial discussions, and so coined a most effective phrase—imperial federation—which helped to crystallize the ideas, and became the watchword of the friends of the unity of the Empire.

The movement still lacked, however, one most important support in the eyes of the average Anglo-Saxon. It had not as yet received the sanction of anyone who could be called a "practical statesman." This lack was supplied in November, 1875, by Mr. W. E. Forster, who announced, in an address delivered in Edinburgh, his belief in the feasibility and wisdom of imperial federation. Progress in public favor, however, still continued slow, in spite of a more or less constant discussion of the subject, until early in the eighties, when the difficulties crowding upon the Empire in both its foreign and colonial interests created a strong, though apparently temporary, current in favor of some immediate action. It was under

circumstances of this sort that a conference on the subject of imperial federation was called, which met in London at the end of July, 1884. This conference brought together a large number of gentlemen prominent in public life both in England and in the colonies. It resulted in the organization of the Imperial Federation League, which continued in existence until the autumn of 1893. The dissolution of the league is not to be understood as implying necessarily the end of the movement, but to an outsider, at least, it seems unlikely that any federal organization will be adopted by the British Empire except under the pressure of acute danger.

IV.—THE HISTORICAL WORK OF PROF. HERBERT TUTTLE.

By Prof. HERBERT B. ADAMS, of Johns Hopkins University.

Since the Chicago meeting of the American Historical Association one of its most active workers in the field of European history has passed away. Prof. Herbert Tuttle, of Cornell University, was perhaps our only original American scholar in the domain of Prussian history. Several of our academic members have lectured upon Prussia, but Tuttle was an authority upon the subject. Prof. Rudolf Gneist, of the University of Berlin, said to Chapman Coleman, United States secretary of legation in Berlin, that Tuttle's History of Frederick the Great was the best written. The Pall Mall Gazette, July 11, 1888, in reviewing the same work, said: "This is a sound and solid piece of learning, and shows what good service America is doing in the field of history."[1]

It is the duty of the American Historical Association to put on record the few biographical facts which Professor Tuttle's friends have been able to discover. Perhaps a more complete account may some day be written.

Herbert Tuttle was born November 29, 1846, in Bennington, Vt. Upon that historic ground, near one of the battlefields of the American Revolution, was trained the coming historian of the wars of Frederick. Herbert Tuttle went to college at Burlington, where he came under the personal influence of

[1] One of Professor Tuttle's Cornell students, Mr. U. G. Weatherby, wrote to him from Heidelberg, October, 1893: "You will probably be interested to know that I have called on Erdmannsdörffer, who, on learning that I was from Cornell, mentioned you and spoke most flatteringly of your History of Prussia, which he said had a peculiar interest to him as showing an American's views of Frederick the Great. Erdmannsdörffer is a pleasant man in every way and an attractive lecturer." The Heidelberg professor is himself an authority upon Prussian history. He has edited the Urkunden und Aktenstücke zur Geschichte des Kurfürsten Friedrich Wilhelm von Brandenburg, a long series of volumes devoted to the documentary history of the period of the Great Elector.

James B. Angell, then president of the University of Vermont and now ex-president of the American Historical Association.

Dr. Angell was one of the determining forces in Mr. Tuttle's later academic career, which began in the University of Michigan.

Among the permanent traits of Mr. Tuttle's character, developed by his Vermont training, were (1) an extraordinary soundness of judgment, (2) a remarkably quick wit, and (3) a passionate love of nature. The beautiful environment of Burlington, on Lake Champlain, the strength of the hills, the keenness of the air, the good sense, the humor, and shrewdness of the people among whom he lived and worked, had their quickening influence upon the young Vermonter. President Buckham, of the University of Vermont, recently said of Mr. Tuttle: "I have the most vivid recollection of his brilliancy as a writer on literary and historic themes, a branch of the college work then in my charge. We shall cherish his memory as one of the treasures of the institution."

Herbert Tuttle, like all true Americans, was deeply interested in politics. The subject of his commencement oration was "Political faith," and to his college ideal he always remained true. To the end of his active life he was laboring with voice and pen for the cause of civic reform. Indeed, his whole career, as journalist, historian, and teacher, is the direct result of his interest in politics, which is the real life of society. From Burlington, where he was graduated in 1869, he went to Boston, where for nearly two years he was on the editorial staff of the Boston Advertiser. His acuteness as an observer and as a critic was here further developed. He widened his personal acquaintance and his social experience. He became interested in art, literature, and the drama. His desire was quickened for travel and study in the Old World.

We next find young Tuttle in Paris for nearly two years, acting as correspondent for the Boston Advertiser and the New York Tribune. He attended lectures at the Sorbonne and Collège de France. He made the acquaintance of Guizot, who recommended for him a course of historical reading. He contributed an article to Harper's Monthly on the Mont de Piété. He wrote an article for the Atlantic Monthly in 1872 on French Democracy. The same year he published an editorial on the Alabama claims in the Journal des Débats. About the same time he wrote letters to the New York Tribune on

the Geneva Arbitration. Tuttle's work for the Tribune was so good that Mr. George W. Smalley, its well-known London representative, recommended him for the important position of Berlin correspondent for the London Daily News. This salaried office Tuttle held for six years (1873–1879), during which time he enjoyed the best of opportunities for travel and observation in Germany, Austria, Russia, and the Danube provinces. Aside from his letters to the London Daily News, some of the fruits of these extended studies of European politics appear in a succession of articles in the Gentleman's Magazine for 1872–73: "The parliamentary leaders of Germany;" "Philosophy of the Falk laws;" "The author of the Falk laws;" "Club life in Berlin."

In 1876 was published by the Putnams in New York, Tuttle's book on German political leaders. From 1876 to 1879, when he returned to America, Tuttle was a busy foreign correspondent for the great English daily and a contributor to American magazines. Among his noteworthy articles are: (1) Prussian Wends and their home (Harper's Monthly, March, 1876); (2) Naturalization treaty with Germany (The Nation, 1877); (3) Parties and politics in Germany (Fortnightly Review, 1877); (4) Die Amerikanischen Wahlen (Die Gegenwart, (October, 1878); (5) Reaction in Germany (The Nation, June, 1879); (6) German Politics (Fortnightly Review, August, 1879).

While living in Berlin Mr. Tuttle met Miss Mary McArthur Thompson, of Hillsboro, Highland County, Ohio, a young lady of artistic tastes, whom he married July 6, 1875. In Berlin he also met President Andrew D. White, of Cornell University, who was then our American minister in Germany. Like Dr. Angell, President White was a determining influence in Tuttle's career. Mr. White encouraged him in his ambitious project of writing a history of Prussia, for which he began to collect materials as early as 1875. More than one promising young American was discovered in Berlin by Mr. White. At least three were invited by him to Cornell University to lecture on their chosen specialties: Herbert Tuttle on history and international law, Henry C. Adams on economics, and Richard T. Ely on the same subject. All three subsequently became university professors.

Before going to Cornell University, however, Mr. Tuttle accepted an invitation in September, 1880, to lecture on international law at the University of Michigan during the absence

of President Angell as American minister in China. Thus the personal influence first felt at the University of Vermont was renewed after an interval of ten years, and the department of President Angell was temporarily handed over to his former pupil. In the autumn of 1881 Mr. Tuttle was appointed lecturer on international law at Cornell University for one semester, but still continued to lecture at Ann Arbor. In 1883 he was made associate professor of history and theory of politics and international law at Ithaca. In 1887, by vote of the Cornell trustees, he was elected to a full professorship. I have a letter from him, written March 10, the very day of his appointment, saying:

> You will congratulate me on my election, which took place to-day, as full professor. The telegraphic announcements which you may see in the newspapers putting me into the law faculty may be misleading unless I explain that my title is, I believe, professor of the history of political and municipal institutions in the regular faculty. But on account of my English Constitutional History and International Law, I am also put in the law faculty, as is Tyler for American Constitutional History and Law.

Professor Tuttle was one of the original members of the American Historical Association, organized ten years ago at Saratoga, September 9–10, 1884. His name appears in our first annual report (Papers of the American Historical Association, Vol. I, p. 43). At the second annual meeting of the association, held in Saratoga, September 10, 1885, Professor Tuttle made some interesting remarks upon "New materials for the history of Frederick the Great of Prussia." By new materials he meant such as had come to light since Carlyle wrote his Life of Frederick. After mentioning the more recent German works, like Arneth's Geschichte Maria Theresa, Droysen's Geschichte der preussischen Politik, the new edition of Ranke, the Duc de Broglie's Studies in the French Archives, and the Publications of the Russian Historical Society, Mr. Tuttle called attention to the admirable historical work lately done in Prussia in publishing the political correspondence of Frederick the Great, including every important letter written by Frederick himself, or by secretaries under his direction, bearing upon diplomacy or public policy.

At the same meeting of the association, Hon. Eugene Schuyler gave some account of the historical work that had been done in Russia. The author of The Life of Peter the

Great, which first appeared in the Century Magazine, and the author of The History of Prussia under Frederick the Great were almost inseparable companions at that last Saratoga meeting of this association in 1885. I joined them on one or two pleasant excursions and well remember their good fellowship and conversation. Both men were somewhat critical with regard to our early policy, but Mr. Tuttle in subsequent letters to me indicated a growing sympathy with the object of the association, which, by the constitution, is declared to be "the promotion of historical studies." In the letter above referred to, he said:

> You will receive a letter from Mr. Winsor about a paper which I suggested for the Historical Association. It is by our fellow in history, Mr. Mills, and is an account of the diplomatic negotiations, etc., which preceded the seven years' war, from sources which have never been used in English. As you know, I am as a rule opposed to presenting in the association papers which have been prepared in seminaries, but as there will probably be little on European history I waive the principle.

After the appearance of the report of our fourth annual meeting, held in Boston and Cambridge May 21–24, 1887, Mr. Tuttle wrote, October 18, 1888, expressing his gratification with the published proceedings, and adding, "I think the change from Columbus to Washington a wise one." There had been some talk of holding the annual meeting of the association in the State capital of Ohio, in order to aid in the commemoration of the settlement of the Old Northwest Territory.

From the time of his return to America until the year 1888 Mr. Tuttle continued to make valuable contributions to periodical literature. The following list illustrates his general literary activity from year to year:

1880. Germany and Russia; Russia as viewed by Liberals and Tories; Lessons from the Prussian Civil Service. (The Nation, April.)
1881. The German Chancellor and the Diet. (The Nation, April.)
1881. The German Empire. (Harper's Monthly, September.)
1882. Some Traits of Bismarck. (Atlantic Monthly, February.)
1882. The Eastern Question. (Atlantic Monthly, June.)
1883. A Vacation in Vermont. (Harper's Monthly, November.)
1884. Peter the Great. (Atlantic Monthly, July.)
1884. The Despotism of Party. (Atlantic Monthly, September.)
1885. John DeWitt. (The Dial, December.)
1886. Pope and Chancellor. (The Cosmopolitan, August.)
1886. Lowe's Life of Bismarck. (The Dial.)
1887. The Huguenots and Henry of Navarre. (The Dial, January.)

1887. Frederick the Great and Madame de Pompadour. (Atlantic Monthly, January.)
1888. The Outlook in Germany. (The Independent, June.)
1888. History of Prussia under Frederick the Great, 2 vols. (Houghton, Mifflin & Co.)
1888. The Value of English Guarantees. (New York Times. February.)
1888. The Emperor William. (Atlantic Monthly, May.)

The great work of Professor Tuttle was his History of Prussia, upon which he worked for more then ten years after his return from Germany. From November, 1879, until October, 1883, Mr. Tuttle was engaged upon the preparation of his first volume, which covers the history of Prussia from 1134 to 1740, or to the accession of Frederick the Great. He said in his preface that he purposed to describe the political development of Prussia and had made somewhat minute researches into the early institutions of Brandenburg. Throughout the work he paid special attention to the development of the constitution.

Mr. Tuttle had brought home from Germany many good materials which he had himself collected, and he was substantially aided by the cooperation of President White. Regarding this practical service, Professor Tuttle, in the preface to his Frederick the Great, said:

> When, on the completion of my first volume of Prussian history, he [President White] learned that the continuation of the work might be made difficult, or at least delayed, by the scarcity of material in America he generously offered me what was in effect an unlimited authority to order in his name any books that might be necessary; so that I was enabled to obtain a large and indispensable addition to the historical work already present in Mr. White's own noble library and in that of the university.

Five years after the appearance of the first volume was published Tuttle's History of Prussia under Frederick the Great. One volume covered the subject from 1740 to 1745; another from 1745 to 1756. At the time of his death Mr. Tuttle left ready for the printer some fifteen chapters of the third volume of his "Frederick," or the fourth volume of the History of Prussia. He told his wife that the wars of Frederick would kill him. We know how Carlyle toiled and worried over that terribly complex period of European history represented by the wars and diplomacy of the Great Frederick. In his preface to his "Frederick" Mr. Tuttle said that he discovered during a residence of several years in Berlin how inadequate was Carlyle's account, and probably also his knowledge, of the working system of the Prussian Government in the eighteenth

century. Again the American writer declared the distinctive purpose of his own work to be a presentation of "the life of Prussia as a State, the development of polity, the growth of institutions, the progress of society." He said he had been aided in his work "by a vast literature which has grown up since the time of Carlyle." The description of that literature in Tuttle's preface is substantially his account of that subject as presented to the American Historical Association at Saratoga in 1885.

In his Life of Frederick, Mr. Tuttle took occasion to clear away many historical delusions which Carlyle and Macaulay had perpetuated. Regarding this wholesome service the Pall Mall Gazette, July 11, 1888, said:

> It is quite refreshing to read a simple account of Maria Theresa's appeal to the Hungarians at Presburg without the "moriamur pro rege nostro" or the "picturesque myths" that have gathered around it. Most people, too, will surely be glad to learn from Mr. Tuttle that there is no foundation for the story of that model wife and mother addressing Mme. de Pompadour as "dear cousin" in a note, as Macaulay puts it, "full of expressions of esteem and friendship." "The text of such a pretended letter had never been given," and Maria Theresa herself denied that she had ever written to the Pompadour.

In the year 1891, at his own request, Professor Tuttle was transferred to the chair of modern European history, which he held as long as he lived. Although in failing health, he continued to work upon his History of Prussia until 1892 and to lecture to his students until the year before he died. A few days before his death he looked over the manuscript chapters which he had prepared for his fourth volume of the History of Prussia and said he would now devote himself to their completion; but the next morning he arose and exclaimed, "The end! the end! the end!" He died June 21, 1894, from a general breakdown. His death occurred on commencement day, when he had hoped to thank the board of trustees for their generous continuation of his full salary throughout the year of his disability. One of his colleagues, writing to the New York Tribune, July 18, 1894, said:

> It was a significant fact that he died on this day, and that his many and devoted friends, his colleagues, and grateful students should still be present to attend the burial service and carry his body on the following day to its resting place. A proper site for his grave is to be chosen from amid the glorious scenery of this time-honored cemetery, where the chimes of

Cornell University will still ring over his head, and the student body in passing will recall the man of brilliant attainment and solid worth, the scholar of untiring industry, and the truthful, able historian, and will more and more estimate the loss to American scholarship and university life.

One of Professor Tuttle's favorite students, Herbert E. Mills, now professor of history at Vassar College, wrote as follows to the New York Evening Post, July 27, 1894:

In the death of Professor Tuttle the writing and teaching of history has suffered a great loss. The value of his work both as an investigator and as a university teacher is not fully appreciated except by those who have read his books carefully or have had the great pleasure and benefit of study under his direction. Among the many able historical lecturers that have been connected with Cornell University no one stood higher in the estimation of the students than Professor Tuttle.

Another of Professor Tuttle's best students, Mr. Ernest W. Huffcut, of Cornell University, says of him:

He went by instinct to the heart of every question and had a power and grace of expression which enabled him to lay bare the precise point in issue. As an academic lecturer he had few equals here or elsewhere in those qualities of clearness, accuracy, and force which go farthest toward equipping the successful teacher. He was respected and admired by his colleagues for his brilliant qualities and his absolute integrity, and by those admitted to the closer relationship of personal friends he was loved for his fidelity and sympathy of a spirit which expanded and responded only under the influence of mutual confidence and affection.

President Schurman, of Cornell University, thus speaks of Professor Tuttle's intellectual characteristics:

He was a man of great independence of spirit, of invincible courage, and of a high sense of honor; he had a keen and preeminently critical intellect and a ready gift of lucid and forceful utterance; his scholarship was generous and accurate, and he had the scholar's faith in the dignity of letters.

The first president of this association, and ex-president of Cornell University, Andrew D. White, in a personal letter said:

I have always prized my acquaintance with Mr. Tuttle. The first things from his pen I ever saw revealed to me abilities of no common order, and his later writings and lectures greatly impressed me. I recall with special pleasure the first chapters I read in his Prussian history, which so interested me that, although it was late in the evening, I could not resist the impulse to go to him at once to give him my hearty congratulations. I recall, too, with pleasure our exertions together in the effort to promote reform in the civil service. In this, as in all things, he was a loyal son of his country.

Another ex-president of the American Historical Association, Dr. James B. Angell, president of the University of Michigan, said of Mr. Tuttle:

Though his achievements as professor and historian perhaps exceed in value even the brilliant promise of his college days, yet the mental characteristics of the professor and historian were easily traced in the work of the young student. * * * By correspondence with him concerning his plans and ambitions, I have been able to keep in close touch with him almost to the time of his death. His aspirations were high and noble. He would not sacrifice his ideals of historical work for any rewards of temporary popularity. The strenuousness with which in his college work he sought for the exact truth clung to him to the end. The death of such a scholar in the very prime of his strength is indeed a serious loss for the nation and for the cause of letters.

At the funeral of Professor Tuttle, held June 23 in Sage Chapel, at Cornell University, Prof. Charles M. Tyler said:

Professor Tuttle was a brilliant scholar, a scrupulous historian, and what luster he had gained in the realm of letters you all know well. He possessed an absolute truthfulness of soul. He was impatient of exaggeration of statement, for he thought exaggeration was proof of either lack of conviction or weakness of judgment. His mind glanced with swift penetration over materials of knowledge, and with great facility he reduced order to system, possessing an intuitive power to divine the philosophy of events. Forest and mountain scenery appealed to his fine apprehensions, and his afflicted consort assures me that his love of nature, of the woods, the streams, the flowers and birds, constituted almost a religion. It was through nature that his spirit rose to exaltation of belief. He would say, "The Almighty gives the seeds of my flowers—God gives us sunshine to-day," and would frequently repeat the words of Goethe, "The sun shines after its old manner, and all God's works are as splendid as on the first day." (New York Tribune, July 15, 1894.)

Bishop Huntington, who knew Mr. Tuttle well, said of him in the Gospel Messenger, published at Syracuse, N. Y.:

He seemed to be always afraid of overdoing or oversaying. With uncommon abilities and accomplishments, as a student and writer, in tastes and sympathies, he may be said to have been fastidious. Such men win more respect than popularity, and are most valued after they die.

V.—TURNING-POINTS IN THE CIVIL WAR.

By Rossiter Johnson.

Broadly stated, the civil war in the United States was an attempt by 10,000,000 people against the will of 20,000,000 to divide a great country into two sovereignties along a line where there was no natural barrier—no inland sea like the Mediterranean, which separates Europe from Africa; no chain of lakes like that between the United States and Canada; no range of mountains like the Pyrenees between France and Spain; not even an unbridgable river like that between China proper and the Mongolian Empire.

Broadly stated, too, it was an attempt to reverse a universal and oft-repeated verdict of a thousand years of civilized experience—the verdict that, with the spread of learning and science, with the growth of organized industry, and especially with the multiplication of lines of traffic and travel, the tendency must be, not toward separation, but toward union of communities that are included within the same natural boundaries. Where once was the Heptarchy we now find the Kingdom of Great Britain, and France and Spain have each resulted from the consolidation of several petty kingdoms. Early in the present century Sweden and Norway were united in one sea-bound country. In 1848 the Swiss cantons formed themselves into one Republic, and the union between Austria and Hungary was perfected. When we were boys, our maps of Italy showed it divided into Lombardy, Tuscany, Sardinia, the two Sicilies, and the States of the Church; but just before our civil war broke out all these were united in one Kingdom. The Canadian provinces were gravitating toward a federal dominion, perfected soon afterward; the States of Central America were forming a league; Japan was on the eve of setting up a centralized government, and Germany was in the first stages of the movement that in ten years merged her separate States

into a powerful Empire. On our own soil, a group of colonies had found it necessary, after trying the experiment of a loose Confederation, to adopt a Constitution which declared that its purpose was to form "a more perfect union," and eighty years of rapid growth had strengthened every reason for such a union, and had developed apparently but one reason against it.

At the beginning of the present century Louisiana, Texas, and Florida belonged to foreign powers; but there was no natural barrier on their frontiers, and within forty years they all gravitated into the United States. Cuba, off the southern shore, and Canada, behind the northern lakes, have not come into the Union yet, and perhaps they never will.

The Kingdom of Poland passed out of existence because it had no natural boundaries, while the smaller and weaker Commonwealth of Switzerland, buttressed about by its great mountains, has maintained its integrity. The Roman Empire, extended by conquests over the known world of that day, went to pieces. The British Empire is similarly constituted, and may yet meet a similar fate. Our grandfathers, separated from the mother country by 3,000 miles of ocean, succeeded in alienating its best colonies a century ago; and now there is some prospect that the Canadian provinces and the Australian colonies, also separated by ocean distance, may secede. Ireland, on the other side of a broad sea channel, would like to secede; but there is no thought of separating Scotland or Wales from England, for they are parts of the same island. The Napoleonic conquests, brilliant as they were, quickly lapsed because they were extended beyond natural barriers. Nobody apprehends that France and Spain will ever fight across the Pyrenees; but twenty-five years ago France and Germany had a bloody war across their artificial boundary, and that boundary was changed, but still remained artificial, and there has been threat of a repetition of the struggle ever since.

In the aspect of its purpose the attempted secession was no more logical than in its means. The avowed reason for separation was that a certain domestic and economic institution existing in one part of the country was doomed to repression and ultimate extinction by the dominant political power in the other part. Yet the nature of that institution and the surrounding circumstances were such that, if separation could have been accomplished, however peaceably, the institution must have passed out of existence sooner than if the Union had remained

as it was. Every tub that is to hold anything requires a bottom, and the Northern States were the bottom of the tub that held slavery. The border States—Maryland, Virginia, Kentucky, Missouri—were the slave-breeding States, and the blacks knew very well what it meant to be sold for service in the cotton States. But between them and Canada lay some hundreds of miles of territory in which they were subject to recapture if they escaped. Divide the country as proposed, and the liberty line, instead of being beyond the Great Lakes and the St. Lawrence, would have been brought down to their very doors. If it were attempted to supply the Gulf States by reopening the African slave trade, this would only have hastened the ruin of the great breeding business of the border States, and they could not long have remained as a barrier, but would have been compelled to seek self-preservation by rejoining the North and thus removing the liberty line still farther to the south, where it would run along the edge of the cotton-growing region.

When, therefore, the Southern people entered upon the attempt at secession, they committed themselves to four capital absurdities: First, they went out with ten millions to meet those who could come against them with twenty millions. Second, they proposed to divide a great country along a line where there was no natural barrier—a line, moreover, that was crossed by great arteries of commerce. Third, they attempted to reverse the economical and political tendencies of a thousand years and divide instead of uniting. Fourth, to save an institution from gradual destruction they undertook a task that, if accomplished, would only have accelerated its decay.

With these facts and principles in mind, it seems natural and reasonable to say that such a war as the insurrection of 1861 could not have any turning-points, for it would be a foredoomed failure. In the long view this is probably correct; and one of the ablest of the Southern military leaders, perhaps the very ablest, has since expressed the opinion that if separation had been effected the sections ultimately would have come together again. Yet there were other circumstances which gave the bloody enterprise a chance of immediate if not permanent success, and the apparent turning-points—the events that shaped and prolonged the contest—are quite discoverable.

Of the four absurdities or insoluble problems that I have pointed out, the Southern people appeared to take cognizance

of but one—the discrepancy in wealth and population—and this they disposed of to the satisfaction of their own minds by three reliances: First, their own superior prowess. They professed to believe, and probably most of them did believe, that, as material for an army, they were altogether superior to the men of the North; that everyone of them would be equal to three or four of the enemy, just as one white soldier is equal to three Indians in a fight on our Western frontier. There was a grain of truth in this, for nearly every man in the South had learned to ride and shoot, while in the North comparatively few had those accomplishments, and at the outset this discrepancy was apparent, but it soon wore away. Second, they counted upon assistance from a political party in the North, and here, too, their expectation seemed not altogether unreasonable, for some of the leaders of that party—notably one who had been President, and one who afterward was a candidate for that office—assured the insurgents, in the strongest terms, of the sympathy and active assistance of their party. But in these declarations Mr. Pierce and Mr. Seymour, as the event proved, committed themselves to an absurdity. It might be true that the Northern wing of their party would grant everything to the Southern wing so long as it remained in the Union, but to help it to get out of the Union, leaving the Northern Democrats in a hopeless minority, would be to commit suicide. The Democratic party of the North did not directly do any such thing—although it did some things that tended indirectly toward that end, and undoubtedly prolonged the war—and many of the most skillful and devoted soldiers in the National Army were Democrats. Third, they believed that as the Southern States were the great producers of cotton, Great Britain would not long allow their ports to be closed and her looms to be kept idle. This, too, seemed a fair reliance, and yet it utterly failed them, for a reason that requires too much explanation to be entered upon here. As France had assisted the thirteen colonies to throw off their allegiance to England, our Southern citizens found it easy to believe that England in turn would help them to their independence, and the successful result of the Revolution of 1776 was constantly cited as proof that the Southern States could not be conquered even by such superiority in resources and men as the North possessed. The undistributed middle is to be found in the difference between the Atlantic Ocean and Mason and Dixon's line.

While the mass of the Southern people ignored all but the first of the four problems, it seems probable that their leaders recognized the importance of at least one of the others—that relating to a natural boundary. The Potomac and the Ohio would have afforded something like a natural boundary, though an imperfect one, and in the formation of the Confederacy the greatest anxiety to include the border States was shown. A record of this is to be found in the Confederate constitution, where it was provided that the Confederate Congress might at any time pass a law forbidding importation of slaves into the Confederacy from any State or Territory that was not a member of it. This was a threat at the slave-breeding industry of Virginia and Kentucky; and there is reason to believe that it had a powerful influence in dragging Virginia out of the Union. So anxious were the secession leaders to secure these States that when the Virginia convention passed a provisional ordinance of secession, which was not to become operative unless a majority of the people of the State voted in favor of it, the capital of the Confederacy was removed at once from Montgomery, Ala., to Richmond, Va., weeks before the day appointed for the people of the State to elect whether they would leave the Union. I believe history does not furnish another instance of a government officially establishing its capital on foreign soil.

But while Virginia, as Farragut expressed it, was "dragooned out of the Union," Kentucky refused to go out on any consideration, although many of her citizens were secessionists. And that refusal was the first turning-point in the great struggle.

With Kentucky as a part of the new Confederacy, the natural line of defense west of the Alleghanies would have been along the Ohio River. But when Kentucky nominally declared herself neutral and practically remained true to the Union, thousands of her sons taking service in its armies, the line of defense was pushed back to her southern border, where there is no natural barrier. The Confederates attempted to establish an artificial defensive line running through Mill Spring, Bowling Green, and Columbus, with Forts Henry and Donelson at the points where it crossed the Tennessee and Cumberland rivers. Against an equipped and determined enemy it is impossible to hold such a line. In January, 1862,

this one was broken through by a force under Col. James A. Garfield, which moved up Big Sandy River and defeated the force under Humphrey Marshall at Paintville; by Gen. George H. Thomas, nine days later, at Mill Spring, where he defeated the Confederates under General Zollicoffer; and by General Grant in February, when he captured Forts Henry and Donelson and swept away the last remnant of the line. Grant's brilliant victory at Donelson, where he demanded unconditional surrender and captured 14,000 men, gave the Unionists the first real inspiration of military ardor and martial pride. It was now plainly evident to those who comprehended the military situation that the "back door of the Confederacy," as it was called, stood open, though in fact, through Kentucky's refusal, it never had been closed. The army of Grant went southward, following the course of Tennessee River, fought and won the battle of Shiloh (or Pittsburg Landing) in April, and later captured Corinth. There was no reason then why it should not have proceeded to the Gulf or into the heart of the Confederacy, and it was certain that ultimately it would, though timid counsels at Washington delayed the movement two years.

But meanwhile an occurrence east of the Alleghanies had created another turning-point in the first summer of the war. There was a Confederate army at Manassas, 30 miles southwest of Washington, and at the national capital an army was organized to attack it. The impatience of the people, expressed in the newspaper cry, "On to Richmond," demanded an aggressive movement at once, and in July the national army, commanded by General McDowell, moved out to the attack. The battle of Bull Run ensued, July 21, 1861, which was well planned and remarkably well fought for green armies, until in the afternoon the Confederates were able to throw in a fresh force on the flank, and at the same time an unaccountable panic arose. The attacking force then broke up and streamed back to Washington in the wildest disorder. It was a complete and disgraceful rout, and all sorts of correspondents were on hand to write it up in the most picturesque fashion. It is doubtful if any battle that ever was fought was made the subject of so much immediate comment, nearly all of which was very unfavorable to the Union cause. There was only one comment that savored of hope for the nation, and that was variously expressed, but by no one better than by a Methodist minister in

Illinois, who, getting news of the battle while he was preaching, closed his sermon with these words, "Brethren, we'd better adjourn this camp-meeting and go home and drill." After the first shock of surprise and mortification, the general sentiment in the North was fairly represented by that clergyman's remark. The London Times had sent over a correspondent with a predetermined purpose of writing down everything that made for the Union and writing up everything that made for the Confederacy; and his glowing accounts of Southern valor and Northern pusillanimity enormously advanced the Confederate cause in Europe and induced English people to invest heavily in Confederate bonds. But the most important result of the battle of Bull Run was its effect on the Southern people. It thoroughly confirmed them in the belief that they were invincible, intensified their contemptuous estimate of Northern courage and character, and made it certain that the war would not end until it was fought out to their exhaustion. Had the Southern army been defeated on that field, as the Northern was, it is extremely probable that a peace would have followed, based on a restoration of the Union, with the institution of slavery not only continued, but guaranteed new privileges and opportunities. From that field, where that institution seemed to be victorious, it only took new courage to rush on to its own complete destruction.

The treatment of the subject of slavery by most of the National commanders excited the amazement and derision of European spectators, and seems incredible to us as we look back upon it. The institution had been so long the centre of American politics that large numbers of our citizens could only think of it as taboo. To their comprehension, clouded with the sophistries of two or three generations, there was a peculiarly sacred property right in the bill of sale of a live negro, such as did not pertain to any other goods or chattels, to houses, or lands, or crops, or farming implements, or stores of provision. It seemed to them perfectly right, if the exigencies of war required it, to sack towns and overrun plantations, cut down the groves, demolish the houses, trample the growing grain, burn steamboats, and tear up railroads; but it was utterly wrong to free a negro or deprive his master of his services, even though that master was in the very act of killing your citizens and destroying your Government. It was proper to shoot to death the only son of a Southern widow if he

wore the gray, but it would be very wrong to liberate one of her hundred slaves. Such childish logic as this was actually put into practice by men as eminent as Generals McClellan, Thomas Williams, and others, and was commended as the only proper thing by half the press of the North. Men in active rebellion could walk into our lines under a flag of truce, demand their runaway slaves, and receive them under guard. Can you imagine a commander sending such a message as this to his antagonist: "If any trouble arises in your camp, anything in the form of a mutiny, we will come and help you to suppress it, and after that we will continue the fight in the regular manner." That would be a pugilist's conception of war. But read the proclamation of General McClellan when he was first sent into Virginia to subdue the rebellion, in which he said: "Not only will we abstain from all interference with the slaves, but we will, on the contrary, with an iron hand crush any attempt at insurrection on their part." Not only was human slavery thus held sacred, but there was a strong prejudice against employing even free negroes as soldiers. It was held that, somehow or other, it would make an essential difference with a Southerner whether the bullet that killed him was fired by a white hand or by a black one; and there were actually Northern regiments that would rather fight alone when the shot from hostile cannon was surging through their ranks than be reenforced by regiments of colored men.

In this way the attempt to subdue the insurrection without hurting the cause of it was continued for a year and a half, with such lack of results as might have been expected. Then, after the battle of Antietam, in September, 1862, President Lincoln issued his preliminary proclamation of emancipation, in which he notified those in arms against the Government that if they did not discontinue hostilities by the end of the year he would proclaim all their slaves free and thereafter would receive colored men into the military and naval service of the country. For this he paid the penalty that always follows any great aggressive or progressive action by any Administration or any Congress—the ensuing elections went heavily against him.

The Confederates only laughed at the proclamation as a papal bull against a comet, and the opposition press of the North generally took the same view. Accordingly, on New Year's Day, 1863, the President issued his final proclamation

of emancipation, in which he declared free all slaves in certain specified States and parts of States then in insurrection, and threw open the privilege of enlistment to colored men, which added 180,000 good soldiers to the National Army. Mr. Lincoln's opponents criticised his action severely, saying sorrowfully that he had changed the whole character of the war. And this was true, though perhaps not in the sense in which they meant it. His proclamation had struck the first blow at the real culprit, the institution of slavery, and changed the struggle from a war for a temporary peace into a war for a permanent peace.

This, therefore, was the third and in some respects the most important turning-point in the movement of those tragic years.

The fourth and most picturesque of the turning-points was a great battle. It is an evident principle in modern warfare that the combatant on whose soil the battles are fought and the sieges maintained must in the end be the loser. The war between the United States and Mexico, in 1846–47, was fought on Mexican soil, and the Mexicans were defeated. The Crimean war, in 1854–55, was fought on Russian soil, and the Russians were defeated. The Franco-Austrian war of 1859 was fought on Austrian soil, and the Austrians were defeated. The Schleswig-Holstein war of 1864 was fought on Danish soil, and the Danes were defeated. The Prusso-Austrian war of 1866 was fought on Austrian soil, and the Austrians were defeated. The Franco German war of 1870 was fought on French soil, and France was defeated. The Russo-Turkish war of 1877 was fought on Turkish soil, and the Turks were defeated. Occasionally there may be an experimental expeditionary war for chances of conquest which proves a failure, like the last English invasion of the Soudan; but where a principle is at stake and the struggle is in earnest the rule holds good. The reason for it is obvious. A belligerent that is powerful enough and determined enough to carry the war into the enemy's territory and keep it there must be powerful enough to succeed in the end; while one that can not prevent such invasion must succumb at last. Defensive warfare seldom accomplishes anything—a principle that was recognized at least as long ago as when the great Roman determined to carry the war into Africa.

On but two occasions did the Confederate forces make any serious attempt at invasion of the North. One of these, in

the autumn of 1862, culminated at the Antietam; the other, in the summer of 1863, at Gettysburg, and both were disastrous defeats for their arms. Militarily speaking, General Lee should have made a victory of Gettysburg. When he had penetrated into Pennsylvania with his entire army and found that the Army of the Potomac was close after him, two bold courses were open to him, one or the other of which would have been adopted by a strategist of the highest rank. He would either have passed by the right flank of the Army of the Potomac, chosen a position, and compelled his antagonist to attack him where a Confederate victory could have been followed by a march on Philadelphia and New York, or he would have passed by its left flank and taken position between it and Washington, where after a Confederate victory he could have entered the capital and dictated terms of peace. Instead of this, General Lee fought a three-days battle, assuming the tactical offensive against an army stronger than his own. On the first day he attacked the right wing of the Army of the Potomac, and only succeeded in driving it back into its true position on the hills. On the second day he attacked its left wing, and only succeeded in forcing that back into its true position. On the third day he attacked the center and lost nearly all the men that he launched against it. After that, though he had inflicted grievous hurt upon his opponent, there was nothing for his own shattered and bleeding army to do but crawl back into Virginia, never to invade again. He had shown considerable skill in conducting defensive campaigns, and had been especially favored by the blunders of the generals that were sent against him; but when he assumed the offensive he showed that he could blunder as badly as they and was incapable of the highest generalship. He missed his greatest opportunity at Gettysburg, and thereafter to the end of the war he and his army were a military obstacle rather than a military power. It required boldness of action to attack Meade's army on Cemetery Ridge; it would have required boldness both of conception and of action to turn its left flank and take a position between it and the national capital.

Lee's determination to fight and not to flank made the turning-point of that campaign and one of the turning-points of the war. So far as the military situation was concerned, the task that remained was simply one of continuing the war in

Confederate territory until Confederate resources should be exhausted.

But the problem involved another element than the military one. Unfortunately, although the Democratic party did not want the Union dissolved, and although it contributed many valiant and some brilliant soldiers to the National Army, yet its action as a party was constantly embarrassing to the Administration, whose duty it was to hold the country together, and correspondingly encouraging to the insurgents. Some of its most extreme men advocated secession, or that which would have led directly to it—probably not because even they wanted the country to be permanently divided, but rather through hope that from a temporary separation would result a new union that should be more serviceable to themselves and their political friends. Indeed, this very idea had been urged in the South to win over Unionists in States that were reluctant to secede, notably in Georgia. It was expressed in the declaration, "We can make better terms out of the Union than in it." The most noted of the Northern disunionists was Clement L. Vallandigham, of Ohio, who, in the summer of 1863, for his violent and disloyal utterances, was tried by court-martial and sent through the lines into the South—the only American citizen that was ever technically banished. He made his way to Richmond, where he reminded the Confederate authorities that another Presidential election would be held the next year, and assured them that if their armies could only maintain the contest until that time the Democratic party would sweep the Lincoln Administration out of power, and then make terms of peace that would be perfectly satisfactory. Of course Mr. Vallandigham was not the only source of that idea in the minds of the Confederate leaders; but his assurance was the most definite and seemed in a certain sense authoritative, since the journals of his party denounced his banishment and made a hero of him, and during his absence he was nominated for governor of his native State. How much of the stubborn and costly fighting in 1864 was due to this hope is only a matter for conjecture; but it is certain that many of the Southern people had begun to tire of the war, and in Georgia and North Carolina there was considerable hope of a movement to secede from secession.

The great military campaign of 1864 was of such a nature that to the superficial observer nothing would appear to be

accomplished until all was accomplished. When, in the spring of that year, General Grant assumed command of the National forces he at once planned a campaign in which they should all move upon the enemy simultaneously, thus taking advantage of their superior numbers by preventing the Confederates from moving their troops back and forth on the shorter interior lines and concentrating them first against one army and then against another, which they had been doing for three years.

The two most important actors in this great enterprise were the Army of the Potomac, with General Grant at its head, moving against the Army of Northern Virginia, commanded by General Lee, and the Western army, under General Sherman, moving from Chattanooga southward against the Confederate army commanded by Gen. Joseph E. Johnston. Early in May, within twenty-four hours of each other, these two armies broke camp and set out upon their bloody and toilsome work. The Confederates adopted the policy of falling back as often as compelled to, and each time taking up a new and strong defensive position, hoping to be attacked in it and to inflict disproportionate loss. The two campaigns were quite similar, consisting of a series of alternate battles and flanking movements. Each battle was delivered in the hope of defeating the enemy at a distance from his base and breaking up his organization; each flanking movement was made to turn him out of a position from which it had been shown that he could not be fought out. By this time the Confederate generals had thoroughly learned the science of defensive warfare and how to use the natural advantages offered by the streams and mountains of Virginia and Georgia. Although the result, if worked out as a purely military problem, was certain to be against them, they could, if they chose, prolong the contest till they were stopped by actual exhaustion; and they chose to do this. How much their choice was determined by the temper of the Southern people and how much by expectation of relief from a Democratic victory in the Presidential election, is only a matter of opinion.

General Grant appears to have known from the beginning what was the nature of the task before him, and to have entered upon it with a clear understanding and a stout heart. The National losses in the battles of that sorrowful summer

were really heavy, but in the popular reports they were enormously exaggerated, and in many publications the figures have not been corrected to this day; while, on the other hand, the Confederate generals had ceased for more than a year to make any reports of their losses, and it was assumed that they were far inferior. Every battle, because it did not compass the destruction of the Confederate army, was proclaimed as a Confederate victory. The opposition journals declared that Sherman was only being lured to destruction in the heart of Georgia; and when Grant's army crossed the James they asked, with the calm confidence of indisputable criticism, why he could not as well have transported it to that point by water at first, thus getting as near Richmond without the loss of a man as he was now after fighting his way overland. In this they ignored what they must have known and should have remembered, that at the outset General Grant plainly announced that the cities of Richmond and Atlanta were not the objectives; that his true objectives were the armies of the enemy, which it was his business to follow and fight until he destroyed them.

The gloom that overspread the land because of the slowness and apparent unsuccess of the military movements was lightened somewhat by the sinking of the cruiser *Alabama* in June and by Farragut's victory at Mobile in August; but, on the other hand, it was deepened by the frightful and needless suffering of the tens of thousands of prisoners at Andersonville, Saulsbury, and Belle Isle. Even this was turned against the National Administration by the opposition journals, which boldly declared, and made many of their readers believe, that Abraham Lincoln was alone responsible for those sufferings.

In these circumstances began the most momentous Presidential canvass we have ever had. It was clearly understood that if President Lincoln was reelected the war would be fought to a finish on the lines by which it was then moving, and the abolition of slavery would be insisted upon. Exactly what would be done if he were defeated, nobody knew, for the Democratic platform said one thing and the candidate who stood on it said another, and there were various interpretations of both; but the feeling was that the war would be stopped and we should have either a separation or a reestablishment of the Union with new guaranties for the perpetuation of human bondage.

Sherman's entry into Atlanta on the first day of September and Sheridan's brilliant Shenandoah victories in October greatly assisted the cause, but Grant was still apparently baffled before the strong defenses of Petersburg when election day dawned upon the country.

In the spring of 1861 the volunteers had gone out as to a picnic, expecting a few scratches, a great deal of entertainment, and some glory. But by this time the people had had more than three years of actual war, and they knew what it meant. They had seen hundreds of thousands of their young men marching to the camp and the battlefield, and they had learned what proportion of them came back maimed and shattered or came back not at all. They saw the Government spending $3,000,000 a day in a wasteful process that actually destroyed nearly all the values, while gold was selling at 250, and they were piling up a national debt which it seemed doubtful if they could ever pay. They saw the conscription wheels turning in the provost-marshals' offices, in districts where recruiting was slow, and knew that it might be anybody's turn to go next. They saw the ghastly photographs of the occasional prisoners that were brought from Confederate stockades. They heard the threats of interference by European powers, never quite hushed while the war lasted. And they had the privilege of a secret ballot, if they chose to make it so. On that November day there was such a hush over the land as had never been known when an election was in progress. It was the most solemn and the most orderly that we had ever seen, and when the boxes were opened it was found that the people had decided—by a popular majority of more than 400,000 and an electoral majority of ten to one—that the country should not be divided and that human slavery should exist within its borders no more forever.

Even in the face of this discouragement, the Confederate armies were able to hold out, and did hold out, until April, 1865, a month after the time when a new Administration with a new policy, would have been inaugurated had the decision been the other way.

If there is one achievement of the American people of which they have more reason to be proud than of all others, that achievement, it seems to me, was the reelection of President Lincoln.

If, then, I have studied correctly the history of the great war, its progress presents five apparent turning-points:

First, the refusal of Kentucky to go out of the Union, which deprived the Confederacy of any natural line of defense west of the Alleghanies and threw open its back door.

Second, the battle of Bull Run, which convinced the Southern people of their invincibility and made it certain that they would fight to exhaustion.

Third, the Emancipation Proclamation, which placed the struggle on its true issue.

Fourth, the battle of Gettysburg, which put an end to any hope of carrying the war into the North.

Fifth, the election of 1864, which decided that there should be no cessation of hostilities till the Confederacy ceased to exist.

A refusal, a panic, a proclamation, a battle, and an election.

The first we probably owe to the Unionist teachings and influence of Henry Clay; the second, to accident; the third, to the sagacity of Abraham Lincoln; the fourth, to the Confederate chieftain's incapacity for the highest generalship, and the fifth, to the long-sighted wisdom and sincere devotion of the people of the loyal States. Nevertheless, had all these failed us except the last, I believe the integrity of the great Republic would still have been preserved, though necessarily at heavier cost.

VI.—TRIBUTES TO HON. HAMILTON FISH, HON. JOHN JAY, HON. ROBERT C. WINTHROP, AND OTHERS.

By Gen. JAMES GRANT WILSON, President of the American Authors Guild.

This association has to mourn the loss, since our last meeting, of six highly valued members, who, with a single exception, had passed the psalmist's three-score and ten. These are the brilliant young historian, Herbert Tuttle, whose eulogy by Dr. Adams you have heard this evening; the learned librarian, William Frederick Poole, one of our esteemed presidents, for many years in charge of the Boston Athenæum, and later of the formation of the Newberry Library of Chicago, who was the author of various useful contributions to American history as well as library topics, including his valuable Index to Periodical Literature, which has passed through three editions; and the genial James Clarke Welling, for nearly half a century a resident of this city, the earlier half of that period actively occupied in editing the National Intelligencer, the latter half the successful president of Columbian University. It was chiefly through the courtesy of Dr. Welling that this association for so many years has enjoyed the privilege of holding its annual meetings in this convenient and central hall. Three other members of national reputation who have recently rested from their labors and joined the great majority will be the subject of this address, to which your attention is now invited.

Hamilton Fish was born in New York City in 1808. He was a descendant of sturdy Peter Stuyvesant, and possessed many of the best traits of the last of the Dutch governors. Graduated from Columbia College in 1827, he was admitted to the bar three years later, and soon after entered political life, being elected to Congress in 1842. Six years later he became governor of the State, defeating the two Democratic candidates. It may be questioned if, among the many able governors of the past one hundred and sixteen years, New York has ever had a

more honored and efficient chief magistrate. Soon after, Governor Fish was elected to the United States Senate, where he acted with the Republican party, strongly opposing the repeal of the Missouri Compromise. He took an active part in the Presidential campaign in favor of Lincoln, and eight years later was conspicuous among those who advocated the choice of General Grant for the Presidency, bearing a prominent part in the campaign. He served as Secretary of State during Grant's two terms. In his intercourse with foreign powers, the lofty character of Secretary Fish, his personal and political probity, his dignity, which was based upon the highest ideals of honorable conduct, were among the most potent factors of his successful diplomacy, which included the settlement of the Alabama claims against Great Britain. Indeed, his whole life was a spotless record of public service in the loftiest positions the State and Nation could confer.

Secretary Fish was for sixty-one years a member of the New York Historical Society, and for several years its president; a life member of the American Historical Association; president-general of the Society of the Cincinnati, of which his father, Col. Nicholas Fish, was one of the founders; president of the board of trustees of Columbia College, to which he bequeathed unconditionally $50,000, and an original trustee of the Peabody Education Fund. Increasing infirmities induced Secretary Fish to gradually retire during the last few years from active participation in the duties of some of these positions. Visiting him at his beautiful country home on the banks of the Hudson opposite West Point a few months before his death, which occurred September 7, 1893, he said:

> Pray thank Winthrop for his kind inquiries as to my health, which is certainly not very good at present. * * * Yes, we have been friends for more than sixty years. Half a century ago we were in Congress together, and for a considerable period have been associated in the Peabody Trust. Ever since we first met as young men we have been warm friends and frequent correspondents. He is almost the only survivor among my youthful contemporaries, and it was exceedingly kind of you to associate our names by dedicating the first and third volumes of your Memorial History of New York to us.

The Secretary possessed a retentive memory which held fast, as with hooks of steel, to anything worth remembering. He vividly recalled some of the famous debates which he heard nearly three-score years ago between Benton, Bayard, Calhoun, Clay, and Webster, as well as many of the survivors of

the Revolutionary period whom he had met under his father's roof and elsewhere when a young man. For Abraham Lincoln and General Grant he expressed the highest admiration, remarking, "History will regard these two great men as second only to Washington."

With the single exception of Washington, no names in American annals are entitled to higher honors than those of Jay, of New York, and Winthrop, of New England. Within seven months the worthy representatives of those distinguished families, both life members of this association, and one a few years ago its president, have passed away, to be no more seen of men. It does not require the partiality of personal friendship for me to say, as of Hamilton Fish, that John Jay and Robert Charles Winthrop were persons whom all Americans delighted to honor. Jay was born in New York City in 1817, and stood second in the Columbia College class of 1836. He studied law in the same office with William M. Evarts, and soon after his admission to the bar became well known as the friend of the oppressed. He was the untiring advocate for the rights of the representatives of St. Philip's colored church, who were admitted as delegates to the diocesan convention of New York after a nine years' contest. Mr. Jay was then, and always, one of the gentlest and most gracious, yet most efficient, of the apostles of liberty, and during a long series of years was the successful counsel for many fugitive slaves. In 1848 he visited Europe with Mrs. Jay, and while there met Macaulay, Hallam, Wordsworth, Professor Wilson, Rogers, Thackeray, Jeffrey, Moore, and many other great heirs of fame, of whom he treasured most delightful recollections.

Mr. Jay was one of the chief instruments in bringing about the dissolution of the Whig party and the formation of the Republican party in 1855. During the civil war he displayed great activity in making patriotic speeches, in advocating the arming of the blacks, and in various ways coöperating with the Union League Club of New York, of which he was twice chosen president. In 1869 he was appointed by General Grant minister to Austria. His six years' acceptable diplomatic services there included a naturalization treaty and the supervision of the United States Commission to the World's Fair of 1873 in Vienna. Two years later he returned to New York, where he continued to reside, actively engaged as a private citizen

in charitable, literary, and patriotic work. In the latter I may be permitted to remember that it was my privilege to be associated with Mr. Jay in bringing to the attention of the Hayes Administration, through the Secretary of State, the subject of international copyright. In 1883 he was appointed by Governor Cleveland as the Republican member of the State civil service commission, of which he was for five years the president. In 1883 the Huguenot Society was formed, and Mr. Jay was unanimously elected its first president, continuing to fill most acceptably the position until 1893, when declining health compelled his resignation.

In connection with his political career, and as a reformer, Mr. Jay delivered numerous addresses. Among those most widely circulated were American Free or American Slave (1856); The Church and the Rebellion (1863); On the passage of the Constitutional Amendment abolishing Slavery (1864); Rome and America (1868); The American Foreign Service (1877); The Sunday School a Safeguard to the Republic, The Fisheries Question, and the Public School a Portal to the Civil Service. His last literary work was the preparation of an elaborate preface, dated May, 1893, to Bayard Tuckerman's memoir of Judge William Jay. He died May 5 of the present year, and was buried by the side of his ancestors in Westchester County. It is not eulogy for me to say that during his long career John Jay's dearest wish was Abou Ben Adhem's:

Write me as one who loves his fellow-men.

Sir Walter Scott relates that when some one was mentioned as a "fine old man" to Dean Swift, he exclaimed with violence that "there was no such thing. If the man you speak of had either a mind or body worth a farthing, they would have worn him out long ago." Goethe, Guizot, and Gladstone, Lyndhurst, Moltke, and St. Hilaire, and among Americans John Quincy Adams, William Cullen Bryant, and Richard Henry Dana, who died at 91—the age at which Titian said genius never grows old—may be cited among the men of the present century in refutation of this theory, which it may be presumed has nothing to do with thews or stature. But if we wanted a bright and shining example of faculties, and faculties of a very high order, remaining unimpaired in mind and body till long past the grand climacteric, we might name Robert C. Winthrop, a life member of this society, who died in Boston November 16,

aged four-score and six, having been born in the same year as Lincoln, Tennyson, Holmes, Darwin, Poe, and Gladstone, who is the sole survivor of these great men.

In the subject of this notice the best blood and the best culture of the Commonwealth of Massachusetts met. He could not, like the victorious Japanese Emperor of to-day, trace his ancestry back through one hundred and twenty-one generations, covering a period of more than two thousand years, but he could go back to the earliest colonial period of New England and to worthy Governor John Winthrop, who came to the New World in 1629, and was the founder of the family in this country. Young Winthrop was of the Harvard class of 1828, standing third among its fifty-three members, and obtaining special distinction as an orator and a Latin scholar. The head of his class was Charles Chauncey Emerson, brother of Ralph Waldo, a man of great promise, who died young. Dr. Samuel F. Smith, the venerable author of the famous hymn America, in a letter dated December 12, says:

> Mr. Winthrop was with me in college and graduated one year earlier than my class. I had, however, no personal acquaintance with him. The customs of the university at that period were such that students of one class scarcely knew one of another class by sight and had no intercourse. I remember Mr. Winthrop was a man of commanding personality, having great dignity of form, pose, and movement (yet not haughtiness), and corresponding dignity of character. He was a successful scholar, a graceful companion, a man of universal propriety, a man to be pointed out as an example, and uniformly to be admired.

Winthrop studied law with Webster, becoming, some two decades later, his successor in the United States Senate. At the early age of 28 he was elected Speaker of the Massachusetts legislature, being the youngest member who has ever occupied that position. In 1840 he was elected to Congress, where he served for ten years with great distinction, maintaining the reputation already acquired as a ready debater and accomplished parliamentarian, and adding to it by a series of eloquent speeches upon public questions, many of which are still consulted as authorities. Mr. Winthrop was Speaker of the House of Representatives for two years, being defeated for a second term by a plurality of only 2 votes, after an exciting contest of several weeks. His course on the slavery question was frequently distasteful to the men of extreme views in both sections of the Union, and in 1851 he was defeated for election to the Senate by a coalition of Democrats and Free-Soilers. In

the same year similar causes conspired to prevent his election as governor of Massachusetts, for which he had been nominated by the Whig party. Declining to be a candidate again, Mr. Winthrop decided to retire from political life and to devote himself to literary, historical, and philanthropic occupations. And this he did most successfully, as a private citizen, for more than four decades. For thirty years he was president of the Massachusetts Historical Society, also filling, most acceptably, many other positions of dignity and usefulness. He was the chosen counselor of George Peabody, and was from its incep tion chairman of the rich banker's important trust for Southern education, to which he gave the great sum of $3,500,000. As president of the board of trustees, Mr. Winthrop always presided at the semiannual meetings held in New York during a period of nearly a quarter of a century.

It is for his orations on great historical occasions that Mr. Winthrop will be chiefly remembered; not merely on account of their scholarship and beauty, but for the manifestation in them of a fervid eloquence that the weight of four-score years failed to quench. They may be found scattered through four volumes of "Addresses and Speeches," the first of which was issued in 1852 and the last in 1886. Mr. Winthrop also excelled in shorter and less formal utterances, such as his address at the unveiling, in 1876, of the Webster statue in Central Park, which some present will remember; his speeches in Boston Common during the civil war that excited much enthusiasm by their patriotic tone, and his beautiful tributes to John Quincy Adams, Henry Clay, Daniel Webster, Edward Everett, Abraham Lincoln, Admiral Farragut, General Grant, and many other eminent men with whom he had been intimate, are models of graceful and discriminating eulogy. His last literary work was the careful revision of an article on Washington for a volume on the Presidents of the United States, published since Mr. Winthrop's death, and the preparation of a privately printed brochure, intended, as stated in the preface, for his "grandchildren and a few surviving friends." It is entitled Reminiscences of Foreign Travel: A Fragment of Autobiography. I will only say of this charming volume that it incidentally illustrates the fact that Mr. Winthrop had probably met a greater number of distinguished Europeans than any other American not occupying an official position, with the possible exception of General Grant.

Visiting Mr. Winthrop in the spring of the present year, I chanced to mention the circumstance that the eminent lawyer, Horace Binney, then four-score and ten, told me he had known all the Presidents of the United States, including Washington and Grant, during whose second term he died in Philadelphia, where he was born in 1780. To this Mr. Winthrop answered: "Mine is, I think, a still more remarkable record than your friend Mr. Binney's, for I have known, and many of them intimately, every one of the twenty-three Presidents, except Washington, who died nine years before I was born."

The key to Mr. Winthrop's public career may be found in a declaration contained in one of his orations:

> I know no policy as a statesman which I may not pursue as a Christian. I can advocate no system before men which I may not justify to my own conscience, or which I shrink from holding up in humble trust before my God.

The Huguenot blood of the Bayards and Bowdoins mingled with English in the veins of Robert C. Winthrop, as it did in that of his father's friend, Chief Justice Jay, whose reputation as a sincere patriot was second only to that of Washington. Of Jay, you will remember, Webster most beautifully remarked: "When the spotless ermine of the judicial robe fell on John Jay it touched nothing less spotless than itself." The same might, with equal truth, have been said of Winthrop, the worthy peer of Webster, Wendell Phillips, Rufus Choate, and Edward Everett, with whom he is often classed as an orator. As a scholar it may be safely asserted that he was the superior of them all. No nobler or more commanding figure was to be met with among his contemporaries, and I shall always deem it among the happiest recollections of my life that it was my privilege to have enjoyed the friendship of so grand an example of an American gentleman as the Christian statesman, Robert C. Winthrop, who was followed to his grave by a respect and veneration that was universal throughout the nation. If we could imagine him present in this hall we might fitly address him in the lines of the illustrious English poet:

> The gravity and stillness of your youth
> The world hath noted, and your name is great
> In mouths of wisest censure.

VII.—THE TEJAS: THEIR HABITS, GOVERNMENT, AND SUPERSTITIONS.

By Mrs. Lee C. Harby.

Among the various accounts of the North American Indians none is found dealing with a nation which possessed the distinguishing excellence of having been always friendly to the white man, a people recorded in the diaries of the priests who went among them as courteous and docile and with a natural inclination toward all that was good.

That the historian has neglected the Tejas Indian will be perceived by whomsoever attempts to search for data upon which to build a narrative of these tribes, agricultural in their habits, living in houses, and banded together in a confederation. The contrast they present when compared with "the wild tribes" which surrounded them makes this neglect the more marked, rendering most valuable and important any light which can be thrown upon their peculiar traits, their location, and the boundaries of their domain.

Bancroft, in his Native Races of the Pacific, follows the Apaches and Comanches, with their various tribal offshoots, down into Texas, yet does not name the Tejas Indians, although his many other histories mention them constantly. With the object of writing an account which can hereafter be referred to as authority, I have searched out my data in various old manuscripts, diaries, and reports made to the church, corroborating the matter so found by the allusions of many authors scattered through their different works.

The name Tejas had existence long before the time of the generally accepted account of how Texas received its appellation. True, the Indians cried "Tejas! Tejas!" upon seeing De Leon and his soldiers, and Father Manzanet, the priest who accompanied the expedition, says in his narrative that it meant "Friends! friends!" But Salmeron tells us that the

Aixos and their kindred tribes "have much gold, which they call Tejas."[1] So the natives may have intended to convey a very different idea from that with which they are accredited. The origin of the name has not been ascertained, but the first mention of it which I can trace is where it is said that Nuno de Guzman in 1530 had as a slave one of the Tejas Indians.[2] From that time on every account of every expedition made to the east of the Rio Grande del Norte mentioned them.

Cabeza de Vaca in 1535 passed up through what is now Texas and traversed the very part where the Tejas Indians dwelt. He does not give the names of the tribes in his narrative, translated by Buckingham Smith, but relates many things of the natives with whom he was thrown which apply directly to the Tejas and harmonize entirely with the very full account which I find in the manuscript of Father Francisco de Jesus Maria, translated by Professor Wipprecht, then of the Agricultural and Mechanical College at Bryan, Tex., which translation is now deposited in the library of the State at Austin, its capital.

Bandelier, in his papers of the Archæological Institute, mentions that the Tejas were known to Coronado,[3] who journeyed through a part of their country during his expedition in 1540. In 1606 Oñate penetrated to their domain. In 1626 Benavides, writing of what Mother Maria de Jesus Agreda had done among the different nations, speaks of "the Theas Indians," saying that was not their exact name, but it had that sound,[4] and Manzanet, in his report to Don Carlos de Siguenza y Congera concerning the Tejas, mentions having a letter in his possession which tells of this.[5] In 1650 Diego del Castillo penetrated "far beyond the Nueces to the country of the Tejas, where he found pearls;"[6] and in 1654 a similar expedition went out under Diego del Guadeljara. In 1683 a Jumana Indian from the Nueces came into the mission of El Paso with a request that the friars there would send priests to teach Chris-

[1] Bancroft's Northern Mexican States, page 383.

[2] Relacion de Castaneda, in Ternaux Compans Voyages, IX, I.

[3] "Y otra nacion de gente se llaman los Tejas, todos lobrados los cuerpos y rostros."

[4] Shea's translation, Lenox Library, New York.

[5] Wipprecht's translation, State library, Austin, Tex.

[6] Bancroft's Northern Mexican States. This must have been in the Llano or San Saba River, where pearls are still found.

tianity to his tribe and to the Tejas, giving a report of that province, which was represented "as one of the richest and most fertile in America."[1] Paredes, writing of them in 1686, speaks of their living by agriculture and of their being far superior to the roaming Indians. We now come to the manuscripts of Manzanet, written in 1690, giving an account of receiving reports concerning the Tejas in 1685 and alluding to the work which had already been done among them by Mother Maria Agreda, the date of which Benevides[2] puts at 1620. It was, perhaps, due to her ministrations that all the writers, from Benevides on, speak of these tribes as being ready and anxious for Christian teaching and of finding them so tractable.

LOCATION.

It is said that Capt. Herbert Martin left the Nueces and went "50 leagues southeast to the land of the Tejas."[1] Manzanet locates them in all that territory about the San Antonio, Guadalupe, and San Marcos rivers, speaking of them as being scattered over enormous tracts of land. He mentions them as being where it is mountainous and again almost to the seacoast, near Espiritu Santo Bay. This is carried out later by Father Francisco de Jesus Maria, who tells of their mountainous country and of their plains stretching nearly to the Gulf. He says that three great rivers crossed their land, one of which was the Trinidad—the Trinity. They were settled on the banks of the Neches and on the San Miguel, where this priest established the second mission built in that immediate neighborhood—the Mission of the Most Holy Name of Mary. The first nine tribes he mentions occupied 35 leagues of land. He then tells of twenty-one more tribes of the Tejas, the last five of which constitute "a very large province which is toward the north," about 505 leagues[3] distant from the first nine named, and with all the rest of the twenty-one scattered "between north and east." He names eight more tribes in the direction of south and west from the first named, about 80 leagues, and still farther south and west he tells of ten more, giving all their names. Here, then, are forty-eight distinct tribes which formed the nation of the Tejas, or "friendly Indians," for the

[1] Bancroft's Northern Mexican States, page 383.

[2] Shea's translation, Lenox Library, New York.

[3] The translator must have written leagues, but meant miles; the first is impossible.

same authority says: "I observe that by the name of Tejas all of the friendly tribes are to be understood; the name belongs to all of them, though their language may be different. This is a general term, and because of the old friendship which they entertain toward each other; it is in this way that 'Tejas' means 'friend.'"[1] He says, too, that the proper name of the province is Aseney, "though not one of all the tribes has that name," while Bancroft writes that the Tejas and the "Cenis" or "Asenais" of the French were the same people.

Lieutenant Bonilla, writing in 1772, says:[2] "From the Medina River, where the Government of Coahuila terminates, Tejas begins, and ends at the fort of our Senora del Pilar de los Adaes. The length is adjusted at about 240 leagues and her breadth at about 800."[3] This territory must have taken in even more than the priest has ascribed to the nation of the Tejas.

GOVERNMENT.

The forty-eight tribes were not all united under the rule of one man; they were in leagues of from five to nine, and all these leagues made a confederation. Hence, they did not comprise a kingdom, but several provinces linked together, and having one head, for Manzanet speaks of "the chief of the Tejas" in such a way as leads one to think he means the chief over all the leagues of tribes; while Father Maria writes of "the great xinesi" as though he were higher than the ordinary ruler over the several leagues, who was called simply xinesi or ineci.

By common consent a certain number of tribes came together and allowed themselves to be governed in a certain way. We have no record of how this was first brought about, but Father Maria, who lived long in their midst, gives a full and very interesting account of the manner in which their government was administered.

Each tribe had a caddi or governor who ruled over a district in size according to the numbers of the tribe beneath his dominion. Under every caddi were certain officials who promulgated his orders; these were called canahas. If the tribe was large,

[1] Fr. Jesus Maria; Wipprecht's translation.

[2] A Short Summary of Events.

[3] The length is impossible, not the breadth. The translator, or copyist who worked for him, must have confused miles with leagues.

there were seven or eight of these; if small, but three or four. When the tribe went to war or set out on a buffalo hunt it was the canaha who gave the order for selecting and arranging the place where the caddi should rest for eating and sleeping. It was also his duty to fetch him the box of tobacco whenever he would smoke, and he had to fill the pipe and place it between the lips of his superior.

There were other subordinate officers called chayas, who executed all which the canahas proclaimed. Under these again were petty officers called jaumas, who insured promptness in the execution of punishment, seeing "that the idlers were whipped by giving them strokes with a rod over the legs and belly."[1] Each tribe was officered in like manner, and over whatever number were leagued together ruled a chief officer called the xinesi. He held his office by the direct line of lineage, and when he died the man nearest in blood entered as his successor. This was also the case with the caddis, but all other officers were selected by the council of the old men.

When the caddi desired to transact a particular piece of business it was the place of the canahas to call together all the elders of the tribe. They met in the house of the caddi, who, when they were assembled, told them of the matter, what were his views concerning it, and why he had so determined. Then each man spoke out his thought, according to his age, the elder having precedence; no one was allowed to interrupt the other, but must take his turn, giving his reasons for his opinions. The caddi listened to all, explaining his own reasons and arguing with them upon theirs. Then he chose the course which appeared to be wisest after all this discussion, showing them clearly why he had so determined.

The Indians had a high respect for their rulers, and among all the officers mentioned the greatest harmony existed, "so that we have not seen any quarrel, small or great, during a year and three months."[2] All the tribes held the xinesi in much awe; they endeavored to please him in every way; they gave him a part of all that they possessed, and his word was law.

The ceremony of seating themselves in high places belonged only to the xinesi and the caddis. Each one of these had a strong upper story or stage to his house, upon which he could

[1] Fr. Jesus Maria; Wipprecht's translation.

[2] Fr. Jesus Maria's MS.

seat himself and observe all that passed. Every word he uttered while in this position was regarded as a positive command from which there was no appeal; therefore the caddis would only occupy these seats upon very particular occasions. These stages were in the shape of tables, and when the caddis sat there they placed their feet upon benches.

That there was a nobility, or rather a distinction of caste, may be gathered from the priest's account, which says: "The houses of the caddis and the nobility have each a bench, upon which no one is allowed to seat himself except the xinesi. In all of these houses there is also a high bed in a niche, whereon he may sleep and refresh himself."[1]

Manzanet also remarks, in his report upon the affairs of two years previous: "From this it can be inferred that among them there exists quite an aristocracy, with the distinction between a nobleman and the common people."[2]

The Tejas had evidently a community of interests. If the house and property of one were destroyed, all the rest joined in and contributed toward providing him with a new home and all needful for his subsistence. Everything was possessed in common; they lent each other their trinkets, and there was no traffic but barter and exchange. This rule did not seem to apply to their deerskins, buffalo hides, or what clothing and blankets they received from the Spaniards, but to their utensils for labor, dwellings, or anything that could be of public benefit if owned by all instead of one. In planting time they all worked together and sowed the land of all the tribe, beginning with that of the xinesi. Here they planted but a small spot, "in order that he might have something green for his pleasure"—he had no need, as far as subsistence was concerned, for all the tribes contributed to his support. Next they planted the field of the caddis and officers in turn according to rank. The old men came next, and so on down to the youngest. The caddis and officers worked with the rest, but not the xinesi—he did no labor, never going out except to walk or to visit. The women and men did not work together, and none were obliged to labor in the fields who had employment within the house. They would not allow idleness; there was always something to be done, and those who would not perform their

[1] Fr. Jesus Maria; Wipprecht's translation.

[2] Fray Damian Manzanet's MS.

part were punished. They labored industriously out in their fields as long as the weather was not severe, but when the cold rains fell or the north wind blew they would not venture out of their houses. Yet they were not idle; they sat around the fire employing themselves with handiwork. It was then that they made their bows and arrows, their shoes of buckskin, and the implements which they needed for husbandry. The women made mats out of reeds and leaves, fashioned the red clay into pots and pans, and busied themselves with dressing the skins of the deer and the buffalo hides.

At certain times of the year they arranged feasts in honor of the great xinesi in remembrance of victories which their ancestors had gained. It was only at these times that all the various tribes of the confederation came together, those under different xinesis mingling in friendship, while their chiefs paid homage to the great xinesi by presenting him with bows and arrows and other things which they considered of special value. For three nights they danced, while their great chief had to see that they, his guests, were well provided with all they desired to eat. During these three days he was believed to be fasting, neither eating nor drinking; nor did he even rest, for he kept moving from place to place, keeping up a kind of tune like that the other Indians sang while they danced. Father Maria says that some superstition was attached to all that, but he could not quite fathom it, nor could he get a lucid explanation from the Indians themselves.[1]

RELIGION.

The Tejas always selected their very oldest man for their priest, and it was he who presented their offerings to God. A part of every article of food was given to the priest before they ate of it themselves. There was a house set aside to be used exclusively for these things. The priest entered here with great veneration, particularly when about to make an offering. This was not done to idols—the Tejas had no "graven images"—but only to that One who, as they said, possessed the power of doing everything and upon whom all things depended—that is, they recognized and understood a Great First Cause.[1]

The people showed the greatest respect to the priests, as did the xinesi and the caddis. Their manner of saying prayers

[1] Fr. Jesus Maria's report to the Count Galve.

was by taking a small box of tobacco and throwing a little up into the air, down to the ground, and then on each side of them. Upon sitting down to eat, instead of pronouncing a benediction, the priest took the first mouthful and cast it out of his plate in the form of a cross, "or as if marking the four winds of heaven—north, south, east, and west."[1] All these tribes believed in one God—in their language, Ayo-Caddi-Aymay. They never spoke of Him in jest, but always said that whatever He did was done well, for He knew all things and was just and would surely punish offenders.[2]

The Tejas Indian believed that when one died the soul went to a place called cayo, meaning "fell to the ground." Each soul went to a separate house and waited until all of its kindred had come. Then they were gathered together and had to go to a new earth to breed anew. "It was for that reason that they buried their dead with their arms and utensils and carried food to the graves that they might eat and have strength to make the journey and be well provided when they reached the new land"[3] The guardians over the souls, they said, "locked them into their houses with keys as large as oxen."

SUPERSTITIONS.

These Indians had numberless superstitions. If a house burned down they said the ground was angry because it had to support the building, and therefore it caused the fire. Then they would not build again upon the same spot. They believed that the hills and trees could be affronted, and so tried in many ways to propitiate them. One belief that was common to all the tribes was that the old men made heaven, fashioning it in the form of a circle, the outline of which was given to them by a woman who was born from an acorn. She then took up her abode in that place, and she it was who daily brought forth the sun and gave birth to the moon and stars, to the rain, the frost and snow, the thunder and lightning.

If the fire would not burn they said it was annoyed; then they threw into it some of the fat of the buffalo as an offering, and, as a matter of course, it would blaze up. Then they were

[1] Fray Damian Manzanet's MS.

[2] Fr. Jesus Maria; Wipprecht's translation.

[3] "Y otra nacion de gente se llaman los Tejas, todos lobrados los cuerpos y rostros."

pleased, believing that their propitiatory offering was accepted. When a death occurred they thought that Death was angry, so made himself known and remembered in that manner. Therefore they at once erected a pole and hung offerings upon it in front of the house where the person had died, that Death might become pleased and not kill any more. Every kind of superstition was mixed up in the practice of their physicians; but there was a healthy check to too much charlatanism, for we are told that if too many of a physician's patients died the people killed him with cudgels. These medicine men cured disease by sucking the place where the pain was, and so drawing it out; also by incantations and ceremonies. It is to be remarked that no priest mentions in his writings anything concerning the administering of the various remedies drawn from nature, such as roots and herbs, in which the Indians have always been thought to have excelled.

They had unwavering faith in dreams. They believed that whirlwinds were caused by the spirit of evil, and would prostrate themselves before it and pray. They thought and did the same about meteors; indeed, they considered that all things could be influenced by entreaties—so they solicited the deer and buffalo that they should allow themselves to be slain; the maize, that it would grow and let itself be eaten; the air, that it would be pleasant and healthful.[1]

When a father or mother was very ill they drowned the youngest child as a propitiatory sacrifice.[2]

CUSTOMS.

When a prominent man died among the Tejas many ceremonies were performed, two Indians being elected to serve as priests. Into the coffin they put bows and arrows, tobacco, and "some of the herb called acoxio." The priests, entirely nude, passed around and around the coffin, continually moving the contents from place to place, while they talked to themselves softly, as if praying. Then they went to the place of interment, which was always near the dead man's house. There they talked again to themselves, making a stroke with an ax at the spot where the head of the corpse was to rest and

[1] Fr. Jesus de Maria's MS.

[2] Revillagigedo; see Apuntes para la historia antigua de Coahuila y Texas.

another stroke at the foot. Then the grave was dug, while the two returned to the house and gave directions about having the body placed in the coffin. This, we are told, was, in the case of the xinesi, as "big as an ox cart." They spoke to the corpse as if it were alive, retiring presently to "talk to God." Soon they returned and told the body what they had said and God had replied. At this juncture an old man came forth and stood in the midst of the people, carrying the largest weapon he could find. He lamented the death of the man, telling the tribe how much they had lost, what a fine warrior he had been, and how many buffalo he had killed, how vigorously he had ever worked. He admonished them to weep for him and show that they felt their bereavement. Then he sat close to the dead and spoke to him, telling him that they all loved him very much; that he must go away comforted and take with him the ax and utensils they had put in his coffin. Then the body was carried away, the men running before it as fast as they could, shooting arrows in the air to announce to the other departed souls that this one was coming. All the buffalo robes and skins of the deceased were laid in the grave and the coffin placed on top of them; then two priests closed the grave, speaking all the time in a low tone. All went home after that, but returned at once with some of whatever was best that they had to eat. This they put upon the grave, with tobacco and fire; then placing a pot of water there they went back to their houses to feast.

Such were the ceremonies they performed when one of their chiefs died. If it was a common person they had less pomp, but if it was a xinesi they would not bury him for two days, for all the tribes over which he ruled must perform the ceremonies. After he was interred they placed before the door of his house a figure of the world, represented by an upright pole upon which was fastened a large globe of fine grass. "Upon that globe they put the moon, represented by large sticks formed in that shape."[1]

When an Indian killed a deer he saved the head for luck. If the owner died at the end of a year or before, the relations went out at night crying and singing sad songs. Behind them all walked an old woman carrying the head of the deer. This she placed on a pyre upon the top of some arrows. Around this they passed all night long, the old woman crying, the rest

[1] Fr. Jesus Maria; Wipprecht's translation.

singing and dancing. By dawn it was all reduced to ashes, and in this way was buried the memory of the dead.[1]

Whenever their relatives died the women screamed and cried, relating their virtues and great deeds. They painted their faces at that time to represent a skull, and when they could cry no longer they painted tear drops upon their cheeks.[1]

They believed that if they saw their relatives die they would die too; so they kept away from the very sick, and sometimes even buried them before the breath had quite left their body.[1]

Their marriage customs were very peculiar; some tribes mated with but one woman, while there were others who practiced polygamy irrespective of consanguinity.[2] If a man fancied a woman whom he knew to be a maiden, he would take to her some of the best things he had. If her parents allowed her to accept the gift, this was an assent to the marriage, but he could not take her along with him until the caddi was first informed. If the woman was not a maiden, all that was necessary was for the man to say, "Will you be my friend? I will give you ——;" whatever he desired to offer. If his offer pleased her, she went with him. Sometimes the agreement was made only for a few days, sometimes it was stated it was to last forever. "But they never kept their word,"[3] nor were there any penalties attached to unfaithfulness. If a woman found a man who in her opinion would give her more than the other, she would take up with him. They did not consider this a disgrace, for one was no more bound than the other. It was all a matter of arrangement; they did not fight or quarrel over it, but they met and talked the thing over between themselves. The woman would say, "It is true that you gave me all that, but it is as nothing to all this other man will give me." She would tell the first man to "have patience; go off and find something else to give me and win me back, or else be comforted; find some other woman who will take you."

There were but few men who had not been thus treated. The father remarks:

> There are many similar things which make one laugh, and yet in another way fill one with pity and compassion. But there is one thing I much

[1] Revillagigedo; see Apuntes para la historia antigua de Coahuila y Texas.

[2] Martinez; see Apuntes para la historia antigua de Coahuila y Texas.

[3] Fr. Jesus Maria; Wipprecht's translation.

appreciate—they never take more than one wife at the same time—that is, they never bring the second home where the first will see her and know of it. If she should discover that he is living with some other, she will have the honor to go away and leave him to her, finding for herself some other husband.[1]

The Tejas did not take care of their maidens; indeed, they did not seem to care whether they were maidens or not, and at last when they came to be married they would leave one man and take up with another as they felt inclined.[2] The women were not at all ashamed of their lewdness; indeed, they boasted of their adventures.

In the xinesi and caddi families and those of the officers there was seldom anything of this, because no one dared to give the two first named an affront, as it was punishable with death, and the officers, who were accounted nobility, tried to imitate their superiors, and so set a good example to the rest of the tribe.[3] The wives of the xinesi and caddis were called by one common name—Aquidau. That marked their station immediately, for all the other women had each her individual name.

When a child was born the father went to bed for five or six days, abstaining from eating meat or fish for fear that the animals would be offended at the birth and not allow themselves to be caught. At the end of that time one of the priests took them by the hand, and that ended the fast.[2] The women were sometimes guilty of great cruelty, for they would kill their babies at birth if they thought their husbands did not wish them to have any. They had been known, too, to set fire to a house and burn up their children in it, saying that they were of no good.[1]

Both sexes were fond of all ornaments. They wore little white beads made of bone, rattles of snakes, and hoofs of deer, all made into strings and fastened to their leathern garments so as to make a noise, which was their delight, especially of the women. These last painted themselves also over the shoulders and back, "in many drawings, particularly their breasts, of which they took great care." The men wore many

[1] Fr. Jesus Maria; Wipprecht's translation.

[2] Revillagigedo; see Apuntes para la historia antigua de Coahuila y Texas.

[3] Fr. Jesus Maria's report to the Count Galve

fine feathers, and were proud of their nice long hair, which they wore spread over their shoulders and "nicely combed." Those who did not possess fine heads of hair scraped their scalps in the manner of a tonsure, leaving a long lock of hair in the middle, reaching to the waist. They used shells for this purpose, taking great care to rid themselves of their beard and eyebrows.

They had a peculiar fondness for bells, also for all iron instruments, especially knives, axes, and hoes, for, as they were housebuilders and planted for a subsistence, they set great store by all which might lighten labor.

These Indians were expert hunters, but could not support themselves by small game alone; so at certain times the whole Tejas nation joined together for great buffalo hunts. The nearest place for finding this animal "was about four days' traveling." They combined for this purpose, as the great danger of these hunts consisted in the probability of the hunters being attacked by their enemies, the "wild tribes," of whom Father Jesus Maria gives a partial list. Of buffalo meat the Indians made two dishes only, one boiled, the other roasted, "which they ate without broth." Their plates were round earthen pans and small baskets woven of reeds, and where none of these grew they made their baskets from the leaves of the various trees. While eating they sat upon benches fashioned from a single piece of wood and not very high; "they sat with one knee lifted up," using their hands for spoons, which they would wipe upon anything which was in reach—their clothes, some grass, on leaves, even on their own feet—" yet liked well to lick their spoon, for of such use they made the two first fingers of their right hand."[1]

The acorns of different kinds of oaks they used as they would corn, crushing them into meal and of that making their bread. They planted two kinds of maize—one that matured in six weeks and the other in three months. They raised also "very good pumpkins, watermelons, and turnsoles." They utilized the seeds of all these, mixing them with their corn, grinding them all up, and thus making "very good tamales." They planted several different kinds of beans, and used a kind of seed which was fine like he seeds of the cabbage; this they ground up with maize and ate dry, as a powder, "first see-

[1] Fr. Jesus Maria; Wipprecht's translation.

ing that they had water near at hand, as it had a habit of sticking in the throat."[1]

It is to be remarked that in spite of telling us all that they do about the planting by the Indians of the Tejas, what they raised, and speaking of their implements, the priests never mention that they used irrigation. We know that there are still the remains of old aqueducts, irrigating ditches, and such improvements, to show that those who planted in the region of the San Antonio River knew of and used this method of cultivation; but we must conclude that they were introduced by the fathers at a later period—say subsequent to 1700—and that, whereas the Pueblo Indians of Isleta depended upon this process of fertilization, the Tejas Indians, living farther east, had better seasons and a surer rainfall, therefore did not find it necessary to irrigate. It was left to the priests to teach them the way in which to make a certainty of good crops, even as they taught them to raise sheep and to spin their wool into clothing and blankets.

When an Indian coming from a distance arrived at the houses of any of these friendly tribes, he was an honored guest. The visitor never had to ask for anything to eat, for it was the custom that all which the host had should be brought out for the guest. When they helped themselves to food they seemed determined to consume all which they had taken, eating slowly, singing, whistling, and talking while at their meals. Those who ate all that was placed before them by the host they considered as braggarts, while they ridiculed those who ate little, "but they abhorred those who ate until they were nauseated."[1]

Nothing was given to a guest before a meal, but afterwards all the requisites for smoking were supplied. Of everything served at a meal a portion was first reserved for the caddi. If the host held that office, he invited the whole village to do honor to his guest and a grand feast began. The caddi first threw some of the food into the air, to the ground, and then on each side of him. Then he went, all by himself, to the elevated place in the corner of his house, and while the others formed a dance he talked, first to the corn, that it should allow itself to be eaten; then in the same way to each dish successively which formed the feast. Then he entreated the

[1] Fr. Jesus Maria; Wipprecht's translation.

snakes that they would not bite, and the deer that they would not kill the snakes. Next he consecrated to God the whole harvest of that house, and finished with announcing that God said they should eat, or that they would all die of hunger. Then the feast began, "and they filled themselves to loathing, for in such a way of stuffing did their feasting always end."[1]

The Tejas Indians paid especial reverence to age, and everything was regulated with respect to it. The young were not allowed to speak in the presence of the old without receiving permission, nor were they permitted to seat themselves unless invited to do so, and if they violated this rule the elders chastised them with their own hands.

The punishments which were inflicted upon offenders consisted of public whippings, according to the crime. If it was for murder, they gave the culprit so many blows that he lost consciousness, and did not generally recover. If he had killed a caddi, one of his family or relatives, or had placed a personal affront or injury upon him or his, the criminal received the judicial degree of capital punishment. This, the priest remarks, he had never witnessed, but that all knew and spoke of it, even the children.[2]

These tribes, like all of their race, were cruel in war, but not more so than those who were at enmity with this nation of "friends." Father Maria chronicles that "their captives were put to death by tying their feet and hands to a post in the form of a cross; there they were torn to pieces, the blood being drunk and the flesh, half roasted, being devoured.[1]

All the men who performed some great and heroic feat in war were called, besides their names, Amay-oxya—that is, "Great man." They carried for their banners the skins and scalps of the men they had killed, while all the skulls of their dead enemies were hung up on trees near the house of the Great Xinesi.

When they had determined to go to war, they assembled six or seven days beforehand to have their war dance and feast. In front of the dancers a pole was erected upon which was hung whatever they were going to sacrifice to their god. They offered up to him meat, corn, tobacco, bows, arrows, and fat from the heart of the buffalo, praying to him for the death of

[1] Fr. Jesus Maria; Wipprecht's translation.

[2] Fr. Jesus Maria's report to the Count Galve.

their enemies, for strength to fight, fleetness to run, and valor to resist. In front of the pole a fire burned, and near by sat an Indian, painted to represent a demon. They painted themselves, they said, so that their enemies could not recognize them, and they had the same habit when they paid a visit to distant tribes, or received them in turn. The demon who sat by the fire threw the sacrifices into the flames, while the men sat around smoking and rubbing their bodies with handfuls of grease, making their supplications. Every prayer was for victory and vengeance; they asked the water to rise and drown their enemies, the fires to spread and burn them, their arrows to kill them, and of the wind that it would blow all hostile arrows aside. Upon the last day of such a meeting the caddis would come forward and make a speech to the tribes in some such way as this:

"Well, then, men, if ye are such, it is not necessary to remind ye of your women, your fathers, and sons; but I charge ye here assembled not to allow them to be a hindrance to your victory."[1]

Their clothing consisted of a mere waist draping of deerskin or buffalo hide. The women used the first, the men the last, "so they might distinguish the sexes."[2] During the summer the men went naked about their houses, but the women, however young, were always covered from the waist down. At festive times they did not lack for ornaments, such as collars, necklaces, and amulets, "which resembled those the Aztecs wore, with this difference, that the Tejas Indians knew nothing of gold or silver."[3] In those days—1692—they had acquired many things from the Spaniards and French, such as little bells, glass beads, and other like trinkets. At their feasts some of the men seemed to take a pride in the fine manner in which they attired themselves, but most of them endeavored to resemble demons, even ornamenting their heads with the horns of deer, and painting themselves in the most ridiculous and hideous way. They soon learned from the Spaniards to set great store by wearing apparel made out of wool, especially of a blue color, "because it was the color of heaven," says Father Jesus Maria, but Fray Damian Manzanet, writing some

[1] Fr. Jesus Maria's report to the Count Galve.

[2] Revillagigedo; see Apuntes para la historia antigua de Coahuila y Texas.

[3] Wipprecht's translation, State library, Austin, Tex.

years previously, remarks upon the same peculiarity, and says that the chief of the Tejas told him that it was because this was the color worn by the beautiful woman who taught them long years before—Mother Maria de Jesus Agreda.

In Manzanet's report to Don Carlos de Siguenza he gives a detailed account of the house of the chief of all the Tejas, evidently the great xinesi, with whom Father Maria was brought into such close contact a couple of years later.

The house was made of posts and grass and was about 20 varas high. It was circular and without windows, getting no light but that which entered through the door, which was "like that of a room in our own country." In the center there burned a fire which was never extinguished, day or night. Around one-half of the room there were ten beds. These consisted of a rug woven of palm leaves stretched between four posts. Upon this rug were spread hides of the buffalo. Above the upper end of the bed, tied to the foot end, was suspended another rug of palm, formed like an arch and lined with a fine kind of mat and painted. It served as a pleasant sleeping apartment. Along the other half of the house there were shelves about two varas high, and above these were placed baskets of palm, round and very large, in which they kept corn, nuts, acorns, and beans. There was also a row of very large, round, earthenware pots made of clay. These were used only for atole—Indian corn gruel—when there was a feast and many people assembled. They kept there, also, six wooden mortars for grinding corn when it rained, for when the weather was fine they ground it without the house, in the courtyard. They had benches of wood, "nicely fashioned," to sit upon, and one was placed immediately in front of the fire, but no man was allowed to occupy this save the great xinesi himself. Outside of the courtyard, in front of its entrance, was another large house which was unoccupied until a council of the chiefs of the leagues—or xinesis—was called; then it was there they were lodged. There was still another house, but smaller, in which the pages slept, for it was a rule that when a council was called each chief must take with him his page, and they were lodged in that house in the succession in which they arrived, each man being given as a bed a mat of palm, rudely painted, with a sack of palm, also fully painted, for his pillow. When the council was dismissed the pages went home, taking with them the mats and pillows as

gifts. All the time that they and their masters remained in that place they were the guests of the great xinesi and fed at his expense.

There was a house used solely for these council meetings, and no one could enter it save on such occasions and as a councilor. A great deception was practiced here upon the under chiefs in this way. The great xinesi pretended that he received advice direct from God, given him through two little children who were said to live in the council house but were never seen by any but himself. He averred that they were sent to him from Heaven, and that through them he conversed with God. The chiefs heard this with awe, and thus he insured unhesitating compliance with his orders. When he desired to make public the utterances of the children he called his chiefs to the council house, where in an elevated and inclosed place about the size of two square yards the children were supposed to be. On each side of this place were chests, woven of reeds, in which the offerings made to the children were laid; but when the great xinesi thought that the tribes had not been sufficiently generous he would strike the chest and say the children would not speak until they were given more.

About the fire in the middle of the council chamber sat many priests, who kept the flame ever burning. When everyone was seated, the great xinesi drew out from the fire some coals, upon which he threw the heart of a buffalo and some tobacco, as an offering to the children. As soon as he was through with these offerings he covered up the fire and closed the door so that no light could be seen. Then the people without the house began to sing and dance, and those within were silent, listening for the voice. Then the xinesi called in his own voice to the children, begging them to speak to God and say that all in Aseuey were going to lead new lives and endeavor to be good, therefore please to make the maize grow, to render their footsteps fleet, to give them health and strength, and to send them many women "for their use." All this time he held in his hands a small pumpkin; this was supposed to speak if God was pleased. When it was silent the chiefs became alarmed and promised many gifts from their tribes to the children and the great xinesi. Then he would roll the pumpkin upon the floor and plead with the children, repeating the promises. Soon the pumpkin began making a noise and a

child's voice was heard saying that God was satisfied, but would punish them if they broke their word. Then the voice told them all that they should do, and the great xinesi sent them off in search of the things which they had promised, while the voice warned them to do all that they had said. The men would go out very much frightened, "hastening away, while each one made a cry like a goat when he is breaking out of an inclosure." The great xinesi remained, stirring the fire until all had gone; then he too came out and went to his own house, about a hundred steps away. No one was ever permitted to see these children, and all were told that it was death to whomsoever should enter that house and attempt to behold them.

"I have not yet been able to find out what it all means," comments the father, and then goes on to dilate upon the trickery that was practiced. Evidently some of the Indians were first-class ventriloquists.

Every eight days ten Indian women had to enter the service of the great chief. These arrived each morning at daybreak, laden with firewood; they swept the courtyard, carried in water, ground the corn for tamales and pinole; they attended to all that was needed, and every night each one went back to her own home to sleep.

For "lunch" the xinesi had tamales, "made in their own particular way;" nuts, pinole of corn, "very nicely prepared;" and a large earthen pan of corn, ground nuts, and beans all cooked together. For "supper" he was served with tamales, cooked beans, and ground nuts. Dinner is mentioned by this priestly chronicler many times, but he gives no bill of fare.

It surprises one to learn how highly the priests thought of these Indians. Father Maria said that it would be easy to evangelize them, because they were so docile "and rather advanced in a kind of civilization;" their language was so easily learned, and they could be won over by gifts without any trouble, for they were much influenced by generosity, the mean man being "bad" and the generous one "good" in their estimation. They were especially tractable and courteous, inoffensive, and obedient, endeavoring to break no laws. "They went to war with their enemies, yet cultivated their fields, and would not abandon their country nor their houses." During sickness they were particularly good to each other,

visiting one another and helping in many ways, besides taking the sick something good to eat.

Father Damian Manzanet distinctly says "that at no time was it necessary to send to the Tejas any soldiers for the safety of the priests; for from the day that the holy fathers first came among them they did everything they could for their welfare, receiving them with unbounded love and kindness." That other feelings arose, was alas, too true; but that was plainly the fault of the Spanish soldiery, who abused the kindly natives, interfered with their wives, and made themselves generally obnoxious. Then jealousies developed between the military and the clergy, and as a consequence the innocent Tejas Indian suffered.

While the Aztec and Pueblo Indians have been fully studied and diffusely discoursed upon by many writers, this record of the Tejas nation and its customs is, I believe, the very first which has ever been put into a connected narrative. That its people will compare favorably with the Aztecs in their form of government and with the Pueblos in their industry will be shown, I think, by even this necessarily restricted relation.

VIII.—WHY CORONADO WENT TO NEW MEXICO IN 1540.

By GEORGE PARKER WINSHIP, assistant in American history in Harvard University, 1893–1895.

While Alvar Nuñez Cabeza de Vaca and his three companions, the survivors of the brilliant array with which Panfilo de Narvaez had landed on the coast of Florida seven years before, were walking along the banks of the Rio Grande in southern Texas, in the early winter of 1535, their Indian friends told them that if they should ascend this stream far enough they would find some large and populous towns. Cabeza de Vaca already possessed a "copper bell, figured with a face," which had come, so the natives from whom he obtained it said, from the distant north, where there were large plates of this metal buried in the ground, and populous settlements. The Spanish wanderers were only anxious to reach their fellow-countrymen in New Spain, the present Mexico, and refused to turn from their due westward route in search of new realms of wealth. They crossed the Rio Grande, and as they were traveling across the present Chihuahua the natives gave to the strangers presents of "fine turquoises, which came from the north," and of "fine emeralds made into arrowheads," which had been brought, the Indians said, from some lofty mountains toward the north, where they were "populous towns and very large houses."[1]

Cabeza de Vaca reached Mexico late the next spring, and there he related all these things which he had learned during

[1] These details are from Cabeza de Vaca's narrative of his journey, which is best consulted in Buckingham Smith's admirable translation. Mr. Ad. F. Bandelier has discussed Cabeza de Vaca's route, with considerable extracts from the various narratives, in his Contributions to the History of the Southwest, published by the Archæological Institute of America and the Hemenway Southwestern Archæological Expedition conjointly. This volume is the most convenient source of information in regard to most of the events touched upon in this paper.

his travels. Some of his hearers had seen the wealth of the Montezumas gathered by Cortes, and all of them had heard the tales of the hoarded gold of the Incas, over which Pizarro and Almagro were still quarreling. As the Spanish settlers listened to these fresh reports from the north, some of them recalled stories which had been told by their Indian neighbors and servants about people and cities and wealth beyond the mountains which shut in New Spain on the north. Pedro Castañeda has preserved one of these stories, which was told by a slave belonging to Nuño de Guzman, the predecessor of the Viceroy Mendoza. This Indian had traveled with his father into the northern country, so he said, and there he had seen some villages so large that they might be compared to the City of Mexico and its environs. There were seven of these villages, and they contained whole streets occupied by gold workers. The father, who was a trader in feathers and plumes, had brought back a large amount of gold and silver, metals which were, according to him, very plentiful in that country.[1]

The clew which Cabeza de Vaca brought to Mexico seemed to be worth following. The viceroy purchased the negro Estevan,[2] who had been one of the companions of Cabeza de Vaca, and he also persuaded another of these wanderers, the Spaniard Dorantes, to remain in the New World and conduct an expedition which should find these seven populous cities, with their wealth of buried precious metal. The expedition was organized, but it never started, "though why," writes Mendoza to his Emperor, Charles V, "I never could find out."[3] During the year or two which followed, 1537 and 1538, three or four attempts were made to enter the country beyond the

[1] I quote from my own translation of Castañeda's Relacion de la Jornada de Francisco Vasquez Coronado, made from the Spanish text, which the trustees of the Lenox Library in New York City kindly allowed me to copy. The only available form of this narrative until now has been the French version made by Henri Ternaux-Compans. My edition of the Spanish text, with an English version and some supplementary narratives, will be in print in a few months in the Annual Report of the United States Bureau of Ethnology.

[2] He is sometimes called Estevanico. Mr. Fiske, in his Discovery of America, calls him "Little Stephen," but I fancy that the diminutive ending is rather a derogatory term than a suggestion of physical inferiority.

[3] The Spanish text of this letter is not known. It was translated by Ramusio, who neglected to give the date in his translation. It is usually quoted from Ternaux-Compans' Cibola volume, p. 287, where it is called "the première lettre" of Mendoza to the King.

northern mountains, but the height of these sierras and the difficulties of the passages prevented any serious undertaking.[1]

Meanwhile Mendoza was busied with the many reforms, financial, administrative, agricultural, and social, which made him "the good viceroy" of Spanish America. He made the collection of the royal rents and revenues more regular and more profitable, imported stock to improve the breeds of sheep and cattle and horses, and provided wives for his colonists—also by importation—but in all this work he was hampered by the fact, which became more serious with the arrival of every vessel coming from the home peninsula, that all these reform measures affected only a portion of those whom the viceroy had to rule. A majority of the immigrants to New Spain, I believe, settled down after a little while as traders and artisans in the towns, or as farmers and herdsmen in the country. The evidence which was taken in 1540 to prove that Coronado's expedition was not depopulating the country of New Spain was evidently ex parte, but the general truth seems clear, from these depositions, that only a very small proportion of the men who accompanied Coronado had ever been settled anywhere in New Spain.[2] The wandering soldiers of fortune, of high and low estate, floated "like cork on the water," as Mota Padilla tells us in his Historia de la Nueva Galicia, upon the permanent settlers in town and country. A good many of these men happened to be in New Spain between 1535 and 1540. Some had stopped there on their way to join Pizarro, and as many had drifted back from Peru and from Central America, where they had helped Pedro de Alvarado to find that some of the wealth of the Incas was only bars of lead with a golden veneering. Just now there seemed to be nowhere in particular for them to go. They hung around Mexico City and the provincial towns, or wandered through the country, claiming a living on the score of a common nationality, or making one by fair means or foul. These were the common fellows. They were bad enough, but the young gen-

[1] Mr. Bandelier gives what details he has been able to find in regard to these futile efforts in the second chapter of his Contributions to the History of the Southwest.

[2] This information is printed in Vol. XIV, pp. 373–384, of the Pacheco y Cardenas Coleccion de Documentos Inéditos relativos al Descubrimiento, Conquista y Colonizacion de las Indias. For the details of Mendoza's administration, see Icazbalceta's documentary Historia de México.

tlemen who had nothing to do seem to have been worse. At least they appear to have caused the viceroy more anxiety. Most of these, probably, like the viceroy himself, were the younger sons of noble Spanish stock. Many of them, among whom was Vasquez Coronado, had come over in the train of the new viceroy in 1535. Their number was increased each year by the arrival of those for whom the home estates and the imperial court had little to promise. There were seventy or eighty of these young gentlemen who eagerly accepted the invitation to accompany Coronado from New Spain in the spring of 1540. In action, these young caballeros were most efficient. In every part of the world of Spanish conquest they occupied positions of leadership and maintained their place by the force of personal valor and ability, among men who followed whom and when they chose and always chose the man who led them most successfully. When inactive, and life in Mexico seems to have been rather tame during the first few years of "the good viceroy's" rule, these same young gentlemen became a most trying annoyance. Armed with royal letters and comprehensive introductions, they had to be provided for by the viceroy. Masters of their own movements, they came as they liked and often did not go away. Lovers of excitement, they secured it regardless of other men's wives or property.

Mendoza had been concerned to find some means of utilizing these guests of his from the very first years of his residence in the New World. The opening up of the border territory to profitable settlement, or the exploration and conquest of new and unknown lands, was of course most desirable. But no mere work for work's sake, no wild-goose chase, would do. The young gentlemen had many friends near to Charles V who would have resented any abuse of privilege or of confidence. Besides, any suitable expedition would cost money, and unless this could all be made good to the accountants in Spain there was sure to be a complaint from those who were always ready to criticise the administration of even the best of viceroys. So Mendoza kept his guests as best he could, while they hung about his court or visited his stock farms to try his servants and his horses. Meanwhile the viceroy anxiously watched the reports sent to him by the new governor of Neuva Galicia, the northwestern province—Vasquez Coronado—and

by the priests who were wandering among the outlying Indian tribes.

One of these priests was Fray Marcos de Niza, a brother already well esteemed in the Franciscan order. He had come over from Savoy or from Spain some years before this, and went first to Peru, where he saw Atahualpa garroted at the command of Pizarro. He came up to Panama soon after that, and from the Isthmus he had walked through Central America, barefooted, as was his custom. Passing through Mexico he went into the northern provinces, where he engaged in the work of converting some of the Indians and half civilizing more of them. In the early spring of 1539 Friar Marcos offered to go and find the Seven Cities. Mendoza readily accepted his proposition and gave him the negro Estevan and some Indians who had been educated in Mexico to act as interpreters. By the end of August the friar had returned and had sworn to the truth of his formal report.[1] He had seen the first of the cities from a distant hillock, whence it appeared to him to be as large or larger than Mexico City. The disobedience and indiscretion of the negro, ignorant of Indian antipathies, had resulted in his own death and had made it impossible for the friar to approach or enter the cities. But Friar Marcos had seen one of these, and his report of it is probably not such an exaggeration as it appears at first thought. Visitors to the pueblo region of the southwestern United States all tell us of the great size which every feature of the country appears to have when seen through the clear desert atmosphere. Besides, as Mr. Bandelier has shown with a somewhat naive use of figures, Mexico City was not very large or imposing in 1539.

But the friar could report some things vastly more interesting than anything he had seen. Everywhere along the route which he had followed the natives had told him about the wonderful cities of Cibola. Many of the people had visited these cities and had seen the houses, many stories high, surrounded by lofty walls of stone, with doorways studded with precious stones—turquoises—specimens of which, brought from the country of the Seven Cities, were shown to the friar. This is all that he had heard about the Seven Cities

[1] The report of Friar Marcos is in the Pacheco y Cardenas Coleccion, Vol. III, p. 325. Parts of it are translated in Mr. Bandelier's Contributions. In this volume Mr. Bandelier has collected all that he could find in regard to Friar Marcos.

which he embodied in his official report to the viceroy, but he included in the report, very properly, another story which he had heard concerning a valley situated a little way off from the direct road to the cities, where the people had golden vessels for their daily use, and where they used golden scrapers to remove the sweat from their bodies, just as the athletic youths in the old Roman baths used to do.

The report of Friar Marcos was scrupulously exact and truthful. He related what he had seen and also what had been told him by the natives. As it stood the report was certainly encouraging, and it probably afforded reason enough for organizing an expedition to conquer the Seven Cities. Just at this time the office of provincial of the Franciscan order in New Spain became vacant, and, as a reward for the friar's services, Mendoza arranged with the brethren of the order to put Friar Marcos at their head. "Instantly," says Castañeda, "all the pulpits of the order resounded with the stories of such wonderful marvels discovered by the new father provincial that in a very few days 300 Spaniards had gathered to go on the expedition to this new world."

The stories which were repeated about these discoveries created a great deal of excitement throughout New Spain. Suarez de Peralta, who was a boy at the time, tells us that the country was so stirred up by the news which the friar had brought that nobody, in truth, thought of anything else—

> For the friar said that the city of Cibola—so the first of these seven cities was called—was large enough to contain within it two Sevilles and over, and the other cities were not much smaller. The houses there were very fine edifices, built with terraces and four stories high. There were also many wild cows in that country, and sheep and goats and rich treasures. Such was the impression they had of it that everybody was for going there straightway and leaving Mexico depopulated. People not only bought and sold the licenses to go there as soldiers, but everybody who had one of these thought that it was as good as a title of nobility at the very least. For the friar, who had come from there, exaggerated everything, saying that this was the best place there was in the world; the people in that country very prosperous, all the Indians there wearing clothes, and the possessors of large herds. The mountains and also the climate were like those of Spain. According to the way the friar described it this ought to have been the terrestrial paradise.

And then Suarez adds, writing half a century later—

> In all this he told the truth, for there are mountains in that country, as he said, and herds, especially of cows, although not like those we have

here. [The Spanish explorers always spoke of the buffaloes as cows.] And the birds and the animals, as well as the climate, are doubtless like those of Spain.[1]

But there is better evidence than that of these individuals, whose recollections of the excitement which followed the return of Friar Marcos may have been affected by what they afterwards learned about the real character of the cities of Cibola. As soon as Mendoza had heard the report of the friar he issued a decree with all the formality of his vice-regal authority that every vessel sailing from the ports of New Spain should proceed straight home to Spain without touching at any other colony in the New World. The viceroy evidently intended to prevent the knowledge of the friar's discovery from reaching anyone who might endeavor to anticipate him in the conquest of these regions. The adelantado, Hernando de Soto, was the most probable rival of Mendoza. De Soto was now, in the fall of 1539, in the interior of the Gulf region of the mainland, but Mendoza, in Mexico, did not know that he had sailed from Havana. So the secretaries of the viceroy read the explicit and peremptory orders to each departing shipmaster, but, in spite of all the precautions, a vessel which left Vera Cruz the 1st of November proceeded almost directly to Havana. At this latter point the master declared under oath that sickness had broken out on board his ship almost as soon as he was out of sight of land, and that besides this he had found that his supply of provisions and water was not sufficient for the voyage to Spain. Hence he was obliged to put in at Havana. Curiously enough one of the men aboard the ship, possibly one whom the sickness had attacked, had some dispatches which he had been asked to deliver to the adelantado De Soto, who was supposed by his friends in New Spain to be still on the island of Cuba. As if to remove any possibility of doubt as to why all this happened just as it did various members of the crew were summoned before a justice, and there deposed on oath what they knew in regard to the news which a certain friar had brought to New Spain from the north. Their testimony is full and explicit and shows that by November, 1539,

[1] Suarez de Peralta's Tratado del Descubrimiento de las Indias y su Conquista has been admirably edited by Señor Zaragoza. It is a very useful work for students of the early Spanish history of Central America. The passages which I translate, somewhat freely, are found on pages 144 and 148.

there was a great deal of common talk about the wealth and magnificence of the cities which the friar had seen among all classes of people in Mexico City, Vera Cruz, Puebla de los Angeles, and the other settlements in all parts of New Spain. The friar had reported, so people said, that the country he had found was rich in gold and silver and other treasures; that the houses were built of stone, high and imposing, and terraced like those of Mexico. "The people there are shrewd and only marry one wife at a time and wear coarse woolen clothes," was what one witness had heard. Another had been told that "the country was very populous, with many great cities all surrounded by walls." This is enough for most of the witnesses, but the evidence of one of them must be quoted more at length, as it was written out by the royal scribe at Havana three and a half centuries ago. Andrés Garcia was the witness who stated that while he was in the City of Mexico, a couple of months before, one Francisco de Bollegas had given him some letters to deliver to Don Hernando de Soto in this city of Havana, or to be taken to the agent of the adelantado in Spain if de Soto was not in Cuba. Continuing his testimony, Garcia stated that he had "a son-in-law who was a barber, who had shaved the friar who came from the said country of the Seven Cities, and that his said son-in-law told this witness that the friar, while he was being shaved, had related how there were many cities and towns situated along a river beyond the mountains, and that these cities were surrounded by walls with their gates well guarded, and that they were very rich and had silversmiths, and that the women wore strings of gold beads and the men wore girdles of gold and white woolen dresses, and that they had sheep and cows and partridges and slaughterhouses and iron forges."[1]

I would not hold even a Franciscan friar responsible for all that he might say while in a barber's chair. My only point is that the reason why the expedition which Vasquez Coronado led to the conquest of the Seven Cities started with greater

[1] The "Informacion habida ante la justicia de la villa de San Christóbal de la Habana de la Isla Fernandina, 12 Noviembre de 1539," was among the documents deposited with the royal referee who decided the contest between Pedro de Alvarado, de Soto, Nuño de Guzman, Cortéz, and Mendoza for the right of conquering the country discovered by Friar Marcos. It is printed, with the rest of these documents, in Pacheco y Cardenas, Vol. XV, pp. 392-398. The authority for many of the general statements in this paper will be found among the material printed in the same volume.

hopes than any other similar expedition in all the colonial history of America, if I am well informed, was that the Spanish settlers of that time and place did not realize the terrible potency of common report, of gossip, or of misunderstandings, which is much the same thing. For nearly everything which Friar Marcos reported, even to the son-in-law of Andrés Garcia, was founded on fact. There were populous settlements at Cibola-Zuñi, at Tusayan, and along the Rio Grande, when Coronado's officers visited these regions within ten months of the date of the depositions at Havana. The people whom they found there lived in houses—not at all unlike our modern city flats or tenement houses—perched one above the other, four and five and even seven stories high. Each village settlement, or city, was well protected by its strong, high outer walls of stone and adobe brick, which were an ample defense against the assaults of their native foes, the Apaches and Navajoes from the Arizona Desert or the surrounding mountains, and the wandering tribes from the more distant prairies of the Mississippi Valley. The Spanish soldiers of Coronado's army, used to the massive fortresses of Europe and practiced in all the arts of later mediæval warfare, felt that they had good reason to be proud of their success in scaling the walls and in forcing their way through the narrow, well-guarded entrances into the first of the Cibola villages, which these practical soldiers named Granada, because it reminded them of the birthplace of their viceroy. A few months later these same soldiers recoiled again and again from the assault against another of these cities, which was only captured at last when thirst put an end to the resistance of the Indians.

These pueblo Indians were very wealthy—well housed, well fed, well clothed, well educated—in comparison with the poor Sobaypuris and other natives of the provinces between Mexico and Cibola, from whom Friar Marcos obtained most of his information in regard to the Seven Cities. They wore woolen or cotton gowns, which were sometimes white when they were new. Their necklaces and girdles were very precious to them. The neighboring Apaches and Navajoes often feasted on the mountain sheep, which so astonished the soldiers who followed Coronado. The Indians who came each winter from the Great Plains for shelter under the walls of the pueblo villages brought many buffalo skins for barter, and surely if these were

not the lords of the vast herds which grazed across the prairies, who were?

These people had no gold, it is true, but some of Coronado's men found a bowl of glittering white stuff, which they say was silver, which the natives prized highly. Then, as now, they treasured their choice precious stones. To-day their doorways are sometimes studded with these jewels. The doorways, it is true—the entrances to their houses, and to the temples where their secret rites are performed—are but skylights, like the hatchways of a ship, in whose wooden rims the Indians stick the pieces of blue turquoise, dug from the mesa side.

In the spring of 1540 Francisco Vasquez Coronado went in search of all these things of which the friar had told him. He commanded an ample force, splendidly equipped, of men whom any explorer might have envied him. He found the Seven Cities of Cibola, and he explored the country from the grand canyons of the Colorado to the rolling prairies of Nebraska and Kansas. He made his way back to Mexico in the early summer of 1542, to report that the expedition was a total, dismal, ruinous failure.

Coronado had done his best. He had even found everything about which he had been told, except the gold and silver. But all this was nothing, because people had not understood what the Indians had meant when they described to Friar Marcos those wonderful cities of Cibola, those pueblo villages of Zuñi and Moki which seem so wonderful to us to-day.

IX.—THE CASA DE CONTRATACION OF SEVILLE.

By Prof. BERNARD MOSES.

The establishment of the absolute power of the Spanish Crown made easy the adoption of the fundamental provision of Spain's American policy, namely, that Spanish America should be regarded and treated as subject directly to the King, and not to be controlled by the functionaries hitherto existing for the government of Spain. When it is said that Spain founded her rights in the New World on the celebrated bull of Alexander VI, which was designed to put an end to conflicting pretensions between Spain and Portugal, there is revealed an attempt to conceal the fact that the only claims which Spain or the Spanish King had to lands in America were based on usurpation. Carrying the pretended right back to a grant by the Pope only fixed the act of usurpation one step earlier. But whatever title was transmitted by the papal bull was conveyed to Ferdinand and Isabella, not to the Spanish nation, and the subsequent political and ecclesiastical administration of the affairs of Spanish America was carried on under the presumption that the King was the sole political superior. From a strictly legal point of view Mexico and Peru, and later the other states of equal dignity, appear as kingdoms in a personal union with the Kingdom of Spain, rather than as colonies in the ordinary meaning of that term.

As a consequence of this fundamental fact of Spanish policy, other bodies were created to assist the King in administering the affairs of his American possessions. The first in rank of these special agencies was the Council of the Indies. It was created while Columbus was making preparations for his second voyage, and at the time of its establishment consisted of eight councilors. It was placed under the direction of the archdeacon of Seville, Don Juan de Fonseca. It was required to reside at court, and might be presided over by the King.

It held supreme and exclusive jurisdiction in the affairs of the Indies. The separation of powers, which has become a familiar feature of modern states, was not carefully regarded in Spain in the sixteenth century. The Council of the Indies covered the whole field of governmental activity. It was a legislative body, in that from it proceeded the laws for the government of the Spanish possessions in America; it was also a judicial body, sitting as a court of final appeal for all cases concerning American affairs which were of sufficient importance to be carried to it; and it was, furthermore, an executive body, inasmuch as its advice was sought by the King on all questions of great importance in the administration of the Indies. And in order that it might be in a position to deal wisely with the affairs intrusted to it, it was a part of the King's policy to appoint many of its members from persons who had been in the public service in America or in the Philippine Islands, and had thus acquired great practical knowledge of the transatlantic countries. (Alman, Historia de Mejico, I, p. 35.)

Provision having been made for the management of the political affairs of Spanish America by the establishment of the Council of the Indies, a second body was then created to take immediate control of the economical affairs. This body had its beginning in the exchange of Seville and the custom-house of Cadiz, which were established between the first and second voyages of Columbus (Lafuente, Historia de España, IX, p. 467). When it had taken definite form it was known as the Casa de Contratacion, which may be appropriately designated in English as the India House. It was definitely established at Seville in 1503. In this year it was ordered that a house should be built in the shipyards of Seville for the trade and commerce of the West Indies, the Canaries, and such other islands as were already discovered or might be discovered in the future. To this "house were to be brought all merchandise and other things necessary for the trade, and such as were carried to the said islands and brought from them. And that in the said house there was to be a factor, a treasurer, and an escrivano, register, or clerk, who were to take charge of all the said trade, as would appear to them more fully by an instruction their majesties had ordered to be drawn up to that purpose."[1]

[1] For the details of the organization of the Casa de Contratacion we refer in the first instance to the laws by which it was constituted and the

This organization was made especially necessary by the plan of the Spanish King to subject the trade with America to a rigid and exclusive monopoly. Under its control Seville became the only port from which ships might be sent to America, and through which colonial products might enter in return. The India House took account of everything that concerned the economical affairs of the Indies; it had power to grant licenses, to equip vessels, to determine their destiny, and to give them instructions as to their loading and sailing. In the performance of its ample judicial functions it consulted lawyers who were paid by the Government. From its decisions appeal could be taken only to the Council of the Indies. Its officers consisted of a president, a treasurer, a secretary, an agent, three judges or commissioners, an attorney, and such other ministers and officials as might be provided for by law. If it is said that the Council of the Indies stood for the King in political matters and the India House in economical affairs, the significance of the latter body is not thereby fully presented. The activity of the India House is contrasted with that of the Council of the Indies by its larger executive functions, its more immediate participation in the practical work of administration, and by acting as the agent of the Spanish King in maintaining and carrying out the laws relating to the Indies. Its jurisdiction was without special territorial limits; it covered all matters embraced in the ordinances, and reached all persons who contravened these ordinances. All cases arising from

powers of the several officers were determined. Among the collections of these laws the most important is that known as "Recopilacion de las Leyes de las Indias Occidentales." The most serviceable single book on this subject is Norte de la Contratacion de las Indias Occidentales, compiled by Don Joseph de Veitia Linage, sometime commissioner and treasurer of the Casa. His book was published as a single folio volume in Seville in 1672. It was "made English" by Capt. John Stevens, under the title of the Spanish Rule of Trade to the West Indies. In his preface Mr. Stevens says, "I have not, in the englishing of this work, confined myself to the rules of translation, which would oblige me neither to add nor diminish; for I have done both, only abstracting from the author and others that have been consulted what was solid and material, without swelling the volume to a needless bulk with those things that are no way beneficial or instructive. And to make abundant compensation for those useless matters omitted others of the greatest consequence have been inserted, all with the approbation of persons most knowing in these affairs." The references here given are to the English volume, which was printed in London for Samuel Crouch, in 1702; see page 2.

theft or any other crime committed on the voyage to or returning from the Indies, in fact, all cases under the laws of the Indies fell within its exclusive province. But in certain cases, where private persons had suffered injury on the voyage from other private persons, the injured party might demand justice either before the judges of the Casa or before an ordinary court of Seville.

In these two organizations, the Council of the Indies and the Casa de Contratacion of Seville, we discover the two special agents employed by the King in carrying out in America the measures of an essentially absolute rule, whether they concerned the political or the economical affairs of his possessions. All offices or bodies established in America for the purpose of exercising authority of any kind whatsoever were subordinate to the King and these agents of his power. The viceroy, the captain general, the legislative, executive, and judicial council known as the audiencia, derived whatever power they exercised directly from the King. The idea of governmental power emanating from the governed found here no application. Under the viceroy and the audiencia the Government of Mexico or Peru was as arbitrary or absolute as that of Spain herself. That there were several viceroys established in the course of time was not a concession to the wishes of the people to have a local government; it was simply a matter of administrative convenience. The audiencia of San Domingo, the first important political body established for the New World and having its seat in the New World, was created by royal appointment and acted for the King. It exercised not only judicial, but also political functions, and sometimes even directed military operations. It superseded the authority of the early discoverers and explorers who, under the title of governor, had been clothed with certain governmental powers. But whatever the titles of the organizations created in America by Spanish authority, they were all designed to contribute to the two great features of Spanish colonial policy, namely, absolute political control and monopolistic privilege in industry and trade.

The first step in carrying out the restrictive commercial policy which Spain had adopted was to limit the commerce with America to a single Spanish port. Seville became the privileged port, and so remained for about two hundred years, until, by the decree of 1717, the India House with all its privileges was

removed to the port of Cadiz. The actual transfer was made in 1718. Down to this time no power had been adequate to break Seville's exclusive privilege. Whatever ships went to America were cleared by the authorities of the port of Seville, although in certain cases they may have actually set sail from the Bay of Cadiz. Ten years later, in 1728, the privilege of Cadiz was invaded. The Company of Guipúzcoa was granted the privilege of trading with the Province of Caracas from the port of San Sebastian. This was the only exception in the policy of exclusiveness till 1765. Then came a change through which other Spanish ports were opened to the American trade; and finally, in 1782, Spanish subjects or members of the colony of New Orleans were permitted to take cargoes from French ports and return to these ports the wares of Louisiana and western Florida. But as indicating the survival of the Spanish infatuation, these traders were not permitted to enter money at the ports of France.

But the restriction as to ports was scarcely less severe at the American end of the route than in Spain. At first a ship might sail to America whenever it was ready and had received the proper license; but later they were allowed to go only in fleets and under a naval escort. This was the usual order, and while it prevailed two fleets were sent annually, one to Porto Bello, on the Isthmus, the other to Vera Cruz, in Mexico. Under the immediate control of the India House, the fleet might not be announced nor the officers chosen except under the order of the Council of the Indies.

Under this arrangement all trade with Mexico had to pass between the port of Seville and that of Vera Cruz; and all trade with South America between Seville and Porto Bello, trade between the several colonies being strictly prohibited. Panama thus became the port of collection and distribution on the Pacific. The exports from the Pacific Coast of South America were gathered here and carried across the Isthmus to Porto Bello, and here was held a fair of forty days' duration, at which the European wares were exchanged for the gold and silver and other products of America. For decades the intercourse between Spain and Spanish South America was annually confined to the few days of unloading and loading the ships of the Spanish fleet. The fair of Porto Bello was, therefore, the great event of the year for the whole of South

America. From it European wares were distributed to Venezuela, Granada, Peru, Chile, and even to Buenos Ayres. But by this system of transportation the prices of the wares imported were increased by 500 or 600 per cent of the original cost. This fair was more especially the great event for the little town of Porto Bello. On the arrival of the vessels most of the inhabitants of the town were accustomed to quit their houses for the advantage of letting them, while others retired to a few rooms in order to make money out of the rest. The poorer quarters were naturally overcrowded, and barracks were erected, principally for the accommodation of the ships' crews, who here kept stalls for the sale of sweetmeats and other things brought from Spain. "But at the conclusion of the fair the ships put to sea, all these buildings were taken down, and the town returned to its former tranquillity and emptiness." (Ulloa, Voyage to South America, I, 88.)

At the time that the India House was organized at Seville to manage the trade with America it was proposed that a building should be constructed for the use of the officers, but by a subsequent order of the same year, 1503, the plan was set aside, and the offices which had been created were kept in the old alcazar. The clerk, whose business it was not only to keep and report the accounts, but also to secure and preserve the books, papers, and records of the trade, was later known as the contador or comptroller. It was at first intended that the commissioners should live in the India House. In 1518, however, Charles V ordered that no one should live in the house, but that it should be held exclusively for trade and the meetings of the officers. In order that the officers of the house might issue proper directions, they were ordered to "consult with and receive information from such persons as were acquainted with the countries discovered;" and the judges of other courts were ordered not to encroach upon their jurisdiction.

The formation of a special corporation at the port of Seville, through which should pass the affairs of the Indies, was one of the first practical indications that these affairs were to be regarded as belonging particularly to the Crown and not to the civil authorities of Spain. In view of the opposition which this policy aroused, the King ordered the "supreme magistrate of Seville not to intermeddle on any account with what concerned the jurisdiction of the India House, but rather diligently to support and maintain it in the privileges granted by him."

(Veitia Linage, p. 7.) Similar commands were issued subsequently, and they were accompanied with the statement that he would not only maintain the new institution, but would add to its authority if necessary. Under Philip II its authority was in fact extended, so that it was a repository not only for the treasures brought from the Indies, but also for certain revenues raised in Andalusia. Even the fitting out of the great armada of 1588 was intrusted to the president and commissioners of the India House, acting in conjunction with the Duke of Medina Sidonia. Their power increased; their credit rose; they appointed officers of fleets and civil magistrates; they granted passes to ships; and in importance and dignity they stood next to the royal councilors. They enjoyed the same privileges and immunities as the judges of chancery and of the other courts. They exercised civil and criminal jurisdiction in all cases involving the owners and masters of ships, sailors, factors and merchants, and those intercepting letters or instructions relating to the Indies. They took cognizance of all crimes committed while sailing to or returning from the Indies, and in these cases no other judges had power to intermeddle; and, according to a decree of 1558, the same method of procedure was followed as in the royal courts of Valladolid and Granada.

Persons violating the ordinances of the India House might be brought from any part of the Spanish King's dominions and be tried by this body in its judicial capacity in Seville. As a court it had, moreover, full jurisdiction over its own officers. In 1655 one of the comptrollers killed another in a street in Seville, and a contest between the India House and the city as to jurisdiction in this case was decided in favor of the former of the contestants. Not only had the India House the extensive jurisdiction here indicated, but it was also subordinate to no council but that of the Indies. And it had power to inflict any degree of punishment.

In accordance with the provisions of the ordinances, the president, "appointed to reside and preside in the India House," was required to be "a person of note and experience, well versed in the affairs of the Indies," having knowledge of places, of the history, and of the voyage. He bore the title of lordship, and in 1628 an order of the council of war decreed that the president on visiting Cadiz should be allowed a guard of sixteen men and an officer. The president was so careful of his dignity that he never acted jointly with the regent of

Seville on any public occasion, because of difficulties of precedence, and in making visits of compliment he was attended by two judges or commissioners, and the aguaciles were accustomed to go before the coach. All the elaborate ceremonies attending his taking up the duties of his office were carefully prescribed by law. (Veitia Linage, pp. 19, 20.)

Among the duties of the president, one of the most important was the fitting out of the fleets and the armadas. He was, moreover, expected to supervise the embarcation of passengers, taking special care that none should go without a license, and that licenses should not be sold or counterfeited. The general ordinance prohibiting the officers of the India House from engaging, either directly or indirectly, in the trade with America applied to the president as well as to all other officers. The punishment of any president found guilty of violating this ordinance was reserved in the hands of the King.

After the president, the most important officers were the judges, who enjoyed the distinction of being styled "jueces oficiales," a title which all other officers belonging to the West Indies were forbidden to assume. For a number of years they had the power to appoint the high officers of the fleets, but after the creation of the Council of the Indies this power fell into the hands of that body. Yet the admirals and vice-admirals continued subordinate to the judges of the India House. They enjoyed supreme authority only when under sail, "and as soon as in their return they cast anchor in any port of Spain their authority ceases, and is transferred to the judge or commissioner who goes down to receive or clear the ships." (Veitia Linage, p. 26.)

The law not only determined the order of business, but also prescribed the office hours of the members. They were required to be on duty three hours in the forenoon of each day, from 7 to 10, during the season from Easter to the end of September, and from 8 to 11 during the rest of the year. Afternoon sessions were held on Monday, Wednesday, and Friday, and if anyone were absent without just cause it was provided that his salary for that day should be withheld. The rule fixing the hours of the judges were not always observed, for "when there are armadas or flotas to fit out or clear they sit at all times and hours, without excepting the greatest holidays or unseasonable times at night; so that, as no hours are exempt from business upon extraordinary occasions, so when

there is no business they do not sit in the afternoon." (Veitia Linage, p. 27.)

No judge or commissioner was permitted to be absent without leave. At first, while there were only three judges, leave was granted by the King, and the absent judge was obliged to secure a deputy; but later, after the number of officers had been increased, it became customary for the president to grant such leaves of absence as were not for more than thirty days. (Veitia Linage, p. 28.)

The members of the India House were divided into two bodies, called the chamber of direction or government and the chamber of justice. For eighty years, or until the founding of the chamber of justice in 1583, the whole business of the institution was conducted by a single body. During the first fifty-four years of this period this body was composed of three judges, and during the last twenty-six years of three judges and a president. After the creation of the chamber of justice, this body took cognizance of all criminal cases; but cases not involving the King's revenue, nor specified in the laws and ordinances of this court, might be tried before this or any other court, at the pleasure of the parties concerned.

The chamber of justice, as established in 1583, consisted of two lawyers, who were called judges, but were distinguished from the jueces oficiales, or judges by office. A few years later, in 1596, a third judge was added, in order to avoid a tie, and to permit all cases brought before the chamber to be decided. All matters of law and justice were determined by the judges, who were lawyers. If a case were originally brought up in the chamber of direction, and there were developed in the course of its consideration contests belonging to a court of justice, it was immediately turned over to the chamber of justice. In this court suits were terminated with a hearing or a rehearing, but cases involving more than 600,000 maravedis, or $1,500, might be appealed to the Council of the Indies. All cases involving the revenue or duty for convoys, or pay due from the King, or sums in charge of the house, which might not be delivered by an order of a court of justice alone, could not be taken up by the chamber of justice until after they had been presented to the chamber of direction. If it were disputed whether an item of business belonged to the chamber of direction or the chamber of justice, the point in question was referred to the president and

one judge from each chamber. For all matters not covered by the particular laws of the India House, resort was had to the general laws of the Kingdom.

Besides the officers already mentioned, there was a fiscal or solicitor, who has been described as "the King's mouth in causes wherein he is concerned, a check upon those that manage the revenues, a spy upon those who embezzle it, an informer against those that defraud it, an agent to improve it, and lastly a two-edged sword in a civil and criminal capacity to defend the patrimony of the crown." This office was first established in 1546. Before this time one of the commissioners had been appointed to perform its duties. He was required to keep a record of all suits managed by him for the King and to pass it on to his successor. His duties, in fact, were those of a prosecuting attorney, but his action was limited to cases concerning the King or his revenue; and his cases took precedence of all others. One of the duties of the commissioners was to go to the port and dispatch the armadas or fleets, and also to receive them on their return. This was regarded as one of their most unpleasant duties, and was performed in turn, beginning with the eldest. An extra allowance for this service of 6 ducats a day was made to each commissioner performing it, and 12 ducats a day to the president. This duty consisted in inspecting the ships and determining whether or not they were in a proper condition to be sent to sea. If repairs were needed the extent of them was determined and they were ordered to be made. If they were overloaded a portion of the freight was ordered to be removed, and great care was taken that no goods should be put on the vessels after they had been cleared. To prevent this no boats, except those properly licensed, were permitted to go over the bar with the fleet. The commissioner clearing the vessels was required to send to the officers of the King at the ports to which the ships were bound an account of the destination of the ships, what force of men and guns they carried, what freight, and the extent of their provisions. It was the duty of the commissioner, moreover, to prevent the shipment of passengers without the proper licenses from the King or council. In case passengers were shipped without such licenses a penalty of 1,000 ducats was imposed upon the officer under whose command they were carried. The commissioner dispatching vessels was required, moreover, to see that the ships carried

a sufficient amount of provisions and fresh water, and that they were ready to sail at the proper time. Having set sail, all the merchant ships were required to follow the admiral, to approach and salute him every day, and not change their course without his leave "on pain of death and forfeiture of goods." (Veitia Linage, p. 45.)

There was a general prohibition that no magistrate or officer of justice in the Kingdom of Spain should interfere in any matter falling within the jurisdiction of the India House, and that no seaport officers should go on board vessels bound to or returning from the Indies. In going from Seville to Cadiz to dispatch vessels the commissioner took with him one of the clerks and a constable. He made the journey on the barge belonging to the India House or on a vessel hired for him for this purpose.

On the return of ships from the Indies they were received by some judge or commissioner of the Casa. This duty, like the duty of dispatching vessels, devolved in turn upon the several members of the organization. The smaller ships were received in Seville near the Golden Tower. Those that were unable to ascend to this point on the river were received at a place called Barrego, while those that came in fleets were always received in the port of Bonança. (Veitia Linage, p. 47.) In 1589 it was ordered that no one but a judge or commissioner from the chamber of direction of the India House should be given a commission to visit the armadas or flotas. The thorough inspection involved in the commissioner's visit appeared to be necessary in carrying out Spain's protective policy. It involved mustering the men to see if those who had left Spain had returned; also an examination to determine whether the vessels carried the guns and ammunition which under the law they were required to carry, and to find out if they had observed their instructions as to landings or had brought goods not properly entered. The commissioner was also required to determine "whether there was any blasphemous person aboard, or any that kept a wench, or whether they had played at prohibitive games or committed any other crimes." (Veitia Linage, p. 48.)

If on inquiry the commissioner found that the master owed the sailors any part of their pay he was required to command that the payment be made within three days; and if this command was not obeyed the master was arrested and ordered to

pay an additional sum to each person to whom he was indebted for every day of delay in making payment. If it appeared from the oath taken by the master and the crew that any person had died on the outward or return voyage, an account and an immediate delivery of his goods were demanded; and if the goods were not immediately delivered the master was required to pay the amount of their value and forfeit to the King double this amount. In his official inspection the commissioner was required to find out whether any slaves or passengers had been admitted on board the vessel without leave, and whether any Indians had been brought from America. This last was strictly prohibited under penalty of a large pecuniary fine, perpetual banishment from the West Indies, and a payment for the return of the Indians to the province or island from which they had been taken. If the person guilty of this offense was unable to meet the payment for the return transportation he was condemned to suffer a hundred lashes. In case persons belonging on the ships were absent at the time of the inspection, it was at first the practice to have them brought before the president and the court, but later they were brought before the commissioner at the port. The result of this leniency was that often the majority of the men were absent from the muster, and this led to the imposition of a small fine for leaving the ship before the inspection. Not only the merchant ships, but also the men-of-war, were inspected on their arrival, with the view of determining whether they had complied with the prescriptions of the law.

It was incumbent upon the India House to render to the Council of the Indies the earliest possible information concerning the arrival of the galleons and flotas. In pursuit of this purpose, the commissioner at the port, on the first intimation of the approach of vessels, sent out a boat to bring this information, which he at once dispatched by an express to the India House, however imperfect it might be. As soon as the vessels had reached the port a second messenger was dispatched to carry to the India House the number of the ships and a statement of the treasure which they contained. This information having been received by the president, was by him immediately sent to the King. The process of unloading the vessels was indicated in the law with great detail. The chests, with letters and accounts, were conveyed to Seville by a special messenger as rapidly as possible.

The plate is unloaded out of the ships into great vessels called "gavarras" or lighters, that of each galeon apart, an escrivano certifying the bars, chests, or other parcels so unloaded, upon which every boat has its guide, and a waiter appointed to bring it up. This is when the ships unload in the port of Bonança, for if it be done at Cadiz an officer with some soldiers is to be in every boat, the whole cargo being in the charge of the admiral's captain, who goes in one of the said boats, and an ensign or sergeant in each of the others, with such number of soldiers as the admiral shall appoint. (Veitia Linage, p. 52.)

In the first phase of its organization the India House comprised three judges or commissioners. As judges they had some functions in common, but in addition to these each had certain peculiar administrative duties. One commissioner was at the same time the comptroller. He kept a detailed account of all sums received by the treasurer and of all bills drawn upon these sums. He was required to preserve "the entries of ships sailing to or returning from the West Indies upon pain of paying the damage the party shall sustain whose entry is lost." (Veitia Linage, p. 56.) For the management of the affairs of his office he was permitted to have a certain number of subordinate officers and clerks. The most important of these was a deputy comptroller who took charge of all matters belonging to the King's revenue. In case the comptroller was sick or absent the deputy was empowered to sign for him and to dispatch all the business of the office. In appointing deputies to any commissioner great care was taken to exclude all such persons as were in anyway concerned in trade with the West Indies.

Among the other officers subordinate to the comptroller there was one who took charge of the goods of deceased persons, the goods of persons absent, and property left in trust. This officer, whenever the occasion arose through illness or absence, might act for the deputy comptroller. Another officer was charged with making the entries of commodities passing through the India House. There was still another officer whose duty it was to have a book in which was kept a record of persons departing for the Indies, their names, places of birth, and the names of their parents. Another officer or clerk had charge of the credits and the uncoined silver. He also conducted the correspondence between the court on the one hand and the King and private persons on the other. All these officers held commissions approved by the chamber of direction. Such other clerks might be employed in the comptroller's office as were demanded by the business in hand.

Some idea of the details of this office may be had from a list of the books kept in the regular course of business. They were as follows: (1) Books of receipts and expenditure, in which were entered "all the charges, in a very plain and distinct method, mentioning what chest the sum came from, what hands it has gone through, whether it came entire, in what sort of coin, and if it be ingots of gold or silver, in what shapes, upon what terms it was sold, mentioning the particular number of bars or other pieces of gold or silver, with the numbers, fineness, and weight, and whether they weighed the same they did in the Indies." (Veitia Linage, p. 58.) In these books were entered also orders for payments, and these orders were the comptroller's receipts for his disbursements. (2) Books of the revenue derived by the cruzada. (3) Books of the King's private revenue. These contained accounts of the sale of gold and silver ingots which were sold at the treasury. These accounts embraced statements of the number and weight of bars, the persons to whom they were sold, and the dates and terms of sale. (4) Books wherein were entered all the commodities deposited in the warehouses. (5) Books in which were recorded all the resolutions of the chamber of direction. (6) Books of the dead, in which a record was kept of all property that belonged to deceased persons, "stating accounts nicely with the dead, making him creditor for all that is brought over in armadas and flotas, and debtor for all that is delivered to his heirs, executors, and creditors." (Veitia Linage, p. 59.) (7) Books in which were entered the fines and the expenses of the court. (8) Books of passengers, in which were entered the names, birthplace, and parentage of all persons going to the Indies, the places of their destination, and the terms of their licenses. (9) Books of letters, embracing copies of all letters written by the court. (10) Books in which were filed copies of all orders, bills, informations, and certificates. (11) Books in which were entered or filed the commissions of all the officers of the India House. (12) Books in which were filed copies of all naturalization papers that had been issued to persons to enable them to participate in the trade with the West Indies. (13) Books in which were charged all utensils and goods delivered to the chief pilot, cosmographer, and other officers. (14) Books in which were kept accounts of the loading of all ships.

Another commissioner held the special office of treasurer, and whatever money was received from the sale of gold, silver, pearls, and other products of the Indies was committed to his custody. The treasurer and the other commissioners were required to give bonds to the amount of 30,000 ducats each, and the treasurer, as the receiver of the money of deceased persons, an additional bond of 15,000 ducats, while of the subtreasurer there was required a bond of 10,000 ducats. The treasury chamber, to which the laws make frequent reference, was a room with barred windows and double doors. Each door had three unlike keys, which were distributed among the commissioners.

Payments of money belonging to the Crown were made on orders issued by the King, "passed by the councils of the West Indies and of the revenue in such manner that the Council of the Indies gives an order for the gross sum, and then that of the revenue grants particular warrants to those that are to receive it. These warrants are presented in the chamber of direction, where assignments are given upon the treasurer." (Veitia Linage, p. 62.) The sums belonging to deceased persons which came into the hands of the treasurer were very great during the early decades of Spanish dominion in America, and it became customary to make loans from this store. In 1633 the King had borrowed from it more than 500,000 ducats, and all the pressure that could be brought to bear upon him was inadequate to make him restore it. It therefore happened that persons holding valid claims against this fund could not recover what was due them because the fund itself had been exhausted by loans to persons who, like the King, either would not or could not meet their obligations. In order to avoid complications and embarrassment from delayed claims, steps were taken to insure that the most efficient means possible should be taken to discover the heirs in all cases; but in case they did not appear or were not discovered within two years after inquiry for them had been instituted, the property of such deceased persons should be regarded as forfeited. The property of deceased persons here intended included not only that of persons who had died in the Indies, but also that which had been left by passengers, sailors, and others who had died on the outward or return voyage. For managing this property the treasurer, by a decree of 1671, was granted a fee of 1 per cent of all that came into his hands.

The third of the three judges or commissioners who at first constituted this court of trade held, in addition to his office of commissioner, the special office of factor or manager. His principal function was to purchase, on behalf of the King or the King's officers, commodities needed for the King's service in America. If a governor or any other officer of the King's appointment in the Indies had need of any material from Spain for the proper conduct of affairs in his department of the public service, he sent to the factor at Seville or Cadiz, who purchased the desired articles and sent them to him by the ordinary means of communication. The factor, moreover, was charged with all commodities brought from the Indies for the King, or bought by the King's orders to be sent thither, except gold, silver, and precious stones. These were consigned to the treasurer. Using the King's arsenal as a storehouse for the things received, the factor was accustomed to deliver them on an order from the King, the council, or the chamber of direction. The actual care of the commodities was confided to a deputy of the factor, who occupied an apartment in the building in which they were kept. Although the King's gold and silver were in the custody of the treasurer, yet if any of it was to be melted down at the mint the supervision of this work devolved upon the factor. And he had, moreover, the control of the funds advanced by the King for carrying ecclesiastics to the Indies and furnishing them those things which they might need and to which they were entitled under the law.

One of the important articles of trade between Spain and the Indies was quicksilver, which was extensively used in the production of silver. The trade in this particular commodity was monopolized by the King, and no other person might engage in it, under penalty of death and forfeiture of property. It having been found that the mine of Almaden did not produce enough to supply the demand of New Spain, it was determined to make up the deficiency from the mines of Peru. For three or four years, therefore, quicksilver was carried from Peru to New Spain, and, as a part of this transaction, goods of various kinds were carried from New Spain to Peru, thus violating the law prohibiting trade between these two countries. Although this trade may have been mutually advantageous to the two colonial kingdoms immediately concerned, it was nevertheless regarded by the King as detrimental to the interests of Spain, and was consequently suppressed. The

subsequent failure of the Peruvian mines caused the Indies for a certain period to be supplied entirely from Europe, principally from Germany and the mine of Almaden. Whatever part was sent from Spain passed through Seville, and was prepared for shipment under the care of the factor or manager of the India House. The manner of putting it up has been described by Veitia Linage:

Every half quintal, or half hundred, is put into a sheep's skin well bound with hempen cords, and that into a tight cask, nailed down, and three of these casks containing a quintal or an hundred and an half into a chest, which, being nailed and bound over with hempen ropes, is wrapped with coarse mats and bound over again. Upon every chest is fastened the King's arms painted on linen cloth, and these chests are for New Spain; for those carry but a quintal that are for the Firmland. (The Spanish Rule of Trade in the West Indies, p. 68.)

To avoid the danger of the skins rotting it was found advisable not to form the packages until the ships were ready to sail.

A commissary was appointed to go in the ships that carry quicksilver, who gave bonds to the factor for the delivery of them to the King's officers at the port they were destined for, and to make good the deficiencies of the regular convoy duty the masters were obliged to pay for such goods as they take aboard. These commissaries were appointed by the president of the India House, and being brought before the chamber of direction gave security; and for their trouble and hazard were allowed 12 ducats for every 18 quintals, accounted a ton, which was paid by the King's officers where they delivered the quicksilver. (Ibid., p. 69.)

For one hundred and twenty-two years the organization known as the India House consisted of three commissioners, who, as already indicated, filled the several offices of comptroller, factor, and treasurer. In 1625 Philip IV added the Duke of Olivares to the list of commissioners, at the same time conferring upon him the office of chief aguazil, which was made hereditary to the immediate heirs of his family. The list of judges or commissioners was also increased by the creation of the office of chief alcayde, or keeper, which was conferred upon the Count of Castrillo and made hereditary to his heirs forever. It devolved upon him, among his other functions, to appoint the doorkeepers of both the chamber of justice and the chamber of direction and their assistants, the doorkeepers of the office for convoy money, the porter at the gate, the keepers of the treasury chamber, and certain other officers of the custom-house and port, all of whom had previously been appointed by the president of the Council of the Indies.

The attitude of Spain toward trade and traders was such as to furnish a positive hindrance to commercial development, and in the course of time the Spaniards had to lament that, through their failure to honor and encourage merchants, most of their trade had fallen into the hands of foreigners. In view of the tendency toward this result, certain special privileges were extended to Spanish merchants trading with the Indies. Among these privileges may be noted that of deferring payments to creditors in case of misfortune causing considerable loss. Any person who had been granted this privilege through letters of license was accustomed to pay 5 per cent per annum on the amounts of the payments deferred.

It was one of the rules of transportation that goods must be landed at the port to which they were consigned, and if they were permitted to be sent to adjacent ports, it was required that they should be sent thither in other vessels than those which carried them from Spain. Goods brought from the Indies consigned to the King were always introduced into Spain free of duty. Provisions and other commodities sent for the use of the soldiers in the garrison in Florida also paid no duty. After import duties had been removed, it was customary to allow goods for use in Spain to be taken from the ships wherever they might come to anchor. But goods imported for reexportation had to be brought to Seville, that arrangements might there be made for the duty of exportation. In the later times the duties were so exorbitant that the officers did not pretend to collect the full amount. It appeared from experience that by this means the maximum revenue would accrue to the State, because of the extraordinary efforts that were made to escape payment altogether when the full duty was demanded.

Important among the burdens imposed upon the commodities involved in the trade between Spain and the Indies was the haberia, or duty levied on the goods carried in order to meet the expenses of the convoy. It was first imposed in 1543, and was then at the rate of 2½ per cent, and in 1587 it was raised to 7 per cent. After the sea had become somewhat more safe by the cessation of hostilities between England and Spain the rate of convoy duty fell to 6 per cent, but it appears to have risen again in the first half of the seventeenth century, for by a decree of Philip IV, dated 1644, it was ordered that this duty should not exceed 12 per cent. All commodities

whatsoever carried to or brought from the Indies, not excepting those belonging to the King himself, were required to pay this duty. No goods were delivered until the duty for convoy had been paid, and this was exacted although the goods had on another account been forfeited. Yet silver and commodities consigned for the holy places at Jerusalem and for the redemption of captives were exempt from this duty. The collecting and accounting for this duty was at one time intrusted to the commissioners of the India House, but after 1572 it was placed in the hands of a special commission of five persons, who sat in a chamber of the India House, which had been appointed for their use.

Besides the functionaries already mentioned there was also a proveedor, or commissary-general, whose duty it was "to order all payments for provisions bought," and to see that no more provisions and stores were taken on board than were needed for use. This officer was subordinate to the president and commissioners of the India House, and all agreements which he might make required their approval in order to be valid. He was permitted to employ four agents or under-commissaries, and was required to render an account of all provisions turned over by him to the officers of the ships taking charge of them. Such provisions were free from all duties. The proveedor might appoint a deputy to act in his absence, and also two clerks, when the amount of the business demanded it.

Among the other persons employed in connection with the shipping to America mention may be made of the superintendent of the workmen engaged in the shipyards. He was expected to examine the ships needing repairs and to oversee the work of repairing, preventing waste through dishonest work or the stealing of material. The master carpenters and master calkers were appointed by the King, on the recommendation of the commissioners of the India House. They were paid by the day whenever they had work. There was also a storekeeper, who had charge of all provisions and materials for fitting out ships, and who delivered them as they were needed "from the time the ships began to be fitted till they sailed." During part of the colonial period there were two of these officers, and at other times three.

The visitors of ships were important officers of the India House. They have been described as next to the commissioners

in dignity. They were required to be "expert and skillful" in fitting out ships, to inspect them, and to determine the number of men and the amount of stores, arms, and ammunition that should be put on board of each. Before leaving for the Indies each ship was required to have a license from the president and commissioners of the India House, and to have been examined either by the president and commissioners themselves or by the visitor. The ship was examined before it was loaded, in order that it might be seen if it were seaworthy in all respects and well ballasted. In addition to these precautions it was provided, in 1609, that no ship under 200 tons burden should be admitted to the convoyed fleet. It was customary to have every ship visited three times.

The first visit was for the visitor to appoint how the vessel was to be fitted; the second, to see whether all had been performed that was ordered; and the third, to clear it for sailing. (Veitia Linage, p. 98.)

The third visit was that already referred to as made by the president or one of the commissioners of the India House. He was accompanied by a visitor, who was to see that the ships were not overloaded, that no freight was carried on deck, that a sufficient amount of provisions had been taken on board, that the vessels carried the requisite amount of arms and no more, and that they had on board no unlicensed passengers or wares not properly entered. At the sailing of a vessel the business of the visitor with reference to it was ended, for on the return of the ships the visitor had nothing to do with them. (Veitia Linage, p. 99.) In addition to these officers there was a large number of clerks and other subordinates, who had in hand the mass of details relating to the trade between Spain and America.

Concerning emigration to the Indies, it was provided in 1511 that any subject of Spain, on properly entering his name, might be allowed to go to the Indies. But later, in 1518, in 1522, in 1530, and in 1539, orders were passed involving restrictions, in accordance with which the bar of exclusion was raised against all persons newly converted from Judaism or Mohammedanism to the Catholic faith, against the children of such persons, or the children and grandchildren of persons who had worn the St. Andrew's cross of the Inquisition, and against the descendants of any person who had been burned or condemned for heresy. Any person violating these provisions was liable to

forfeiture of property, a hundred lashes, and perpetual banishment from the Indies. To prevent violations of the restrictive laws concerning emigration it was provided by a royal order of 1522—

That for the future the judges or commissioners of the India House should not suffer any person whatsoever, though of such as were allowed or though he had the King's letters of license, to go over to the Indies unless they brought certificates from the places where they were born, to make appear whether they were married or single, describing their persons, setting down their age, and declaring that they are neither Jews nor Moors, nor children of such, nor persons newly reconciled, nor sons or grandsons of any that have been punished, condemned, or burned as heretics or for heretical crimes, such certificates to be signed by the magistrates of the city, town, or place where such persons were born. (Veitia Linage, p. 108.)

A few years later, in 1559, the prelates in the Indies were instructed "to inquire whether there were any Jews, Moors, or heretics in those parts, and to punish them severely." And in 1566 all the sons and grandsons of heretics were excluded from offices or places of trust.

All magistrates, captains, pilots, masters, mates, or other persons aiding in the violation of these restrictions on emigration were subject to a great variety of penalties—fines, lashes, banishment, imprisonment, and transportation to Spain—which were increased to such an extent that in the beginning of the seventeenth century it was decreed that passengers who should go to the Indies without the proper leave "should be sent to the galleys for four years, or, if they were persons of quality, to Oran for ten years." This penalty should also be imposed upon masters of ships, and in addition a fine of 1,000 silver ducats. In 1607 it was provided that any sea officer carrying passengers to the Indies without leave should be punished with death. But in the course of time the extreme rigor of the law was abated in favor of a pecuniary fine. Yet the severer measures continued to have supporters, since the removal of restrictions caused the countries to be overrun with peddlers, who cut off more or less of the trade of the established merchants.

The president and commissioners of the India House, without reference to the King, might grant leave to go to the Indies to mestizos who had been brought to Spain; to merchants, even such as were married, provided they had permission from their

wives and left 1,000 ducats as a guaranty that they would return within three years; to agents of merchants in the Indies, but only for three years, and to inhabitants of the Indies who were known to have wives there. Any other person required a license from the King.

When the question arose as to what persons should be regarded as merchants, the title was interpreted so as to include anyone who had shipped goods rated for the payment of duties at $750 or more. Married women whose husbands were living in the Indies might go to them and be accompanied by a kinsman within the fourth degree of consanguinity; but in case the husband went to Spain for his wife he was not permitted to return without a license from the King; and the privilege of going to the Indies was strictly withheld from all single women.

Although the president and commissioners of the India House might permit merchants to go to the Indies without their wives for a period of three years, provided they had the consent of their wives and left the guaranty of $1,000, yet no other married man, not even a governor or other officer of state, was allowed to go without his wife, except under an express dispensation from the King. And without this dispensation the wife of the highest officer, as well as the wife of the ordinary man, was required to bring the same proofs of identity that were required of the men.

How rigid was the restriction imposed on emigration may be seen from the fact that although one held a commission for employment in the Indies, and even a pass from the King, he was not permitted to sail without a license from the India House. It was not, however, to be expected that all persons would bring their certificates of qualification in the exact form required by the law. And when there were deficiencies in the papers presented, such deficiencies were sometimes supplied by information gathered by the officers of the India House; and sometimes, in order to avoid the great inconvenience that might be caused by delay, a pass or license was issued on the receipt of satisfactory security that certificates in due form would be subsequently forwarded from the proper sources.

The rules governing the passengers on the voyage required that they should carry their own provisions, and the masters of ships were prohibited from undertaking to furnish them food. The passengers were, moreover, required to swear that they

would not remain at any port at which they might stop on the way to their proper destination, and that they would not carry their goods ashore before they had been examined. If one carried a license to reside at a specified town in the Indies, he was expected to reside there: and if one pretended to be going to the Indies to exercise a certain handicraft, he was obliged to follow it. (Veitia Linage, p. 113.) And there were also rules prohibiting persons from going from one province to another without leave from the King. Similar restrictions were imposed upon persons going from the Indies to Spain. They might not leave without permission "from the viceroys, presidents, or governors of the places of their habitation." And the governors of seaports were prohibited from granting leave to any person not residing in their jurisdiction, except on the presentation of a license from the civil officer within whose jurisdiction he lived.

By an ordinance of 1560 it was provided that persons going to the Indies without license should forfeit to the Crown all property acquired there, with the exception of one-fifth part, which should go to the informer; and they should, moreover, be arrested and sent as prisoners to Spain at their own expense. Neither they nor their heirs might receive goods sent to them; and, in accordance with a bull issued by Alexander VI, they were declared to be excommunicated.

If the royal ordinances which touch on the ecclesiastical affairs of America indicate the will of the Spanish Kings in this matter, they were moved with a strong desire to promote the religious welfare of the Indians. Presupposing this desire, the restrictions which were placed on the emigration of friars and priests appear as means for preventing any but those of virtuous and exemplary lives from going to the Indies. These restrictions were carried out through orders to the commissioners of the India House not to allow the friars of any order to go without a license. Persons attempting to avoid this provision were seized and sent back to Spain. As early as 1530 an order was issued to the commissioners of the India House requiring them not to permit foreign friars to go to the Indies, even if they had leave from their superiors. This prohibition was confirmed by later ordinances, under which it was required that all applications by ecclesiastics for passes should be referred to the Council of the Indies. In 1664 the privilege of entering upon missionary work in the Indies was granted

to Jesuits under certain restrictions. The members of the religious orders who went to America under these conditions went at the King's expense, but they were obliged to restore to him the amount of his outlay in case they returned to Spain without leave. In the course of time, by reason of the rise of prices, the allowance which had been granted in the beginning for these expenses was found to be quite inadequate, and whatever further amount was needed by the friars was made up by the orders to which they belonged.

Friars of the order of Carmelites who went shod were specially prohibited from going to the Indies, but this prohibition did not stand against the barefooted friars of this order. After the beginning of the seventeenth century the prohibition was made to apply to all orders which had not already established monasteries in America. By an act of the council it was provided, in 1665, that no friar having returned from America to Spain would be allowed to go back, even though he had a license, unless on his arrival in Spain he had reported to the council the cause of his return. The long list of ordinances limiting the movements and general activity of the members of the religious orders indicates to what marvelous lengths and into what minute details Spain's restrictive system extended.

In keeping with the restrictive policy of the Spaniards, all foreigners were forbidden to trade with the Indies without a special license from the King; and having obtained such a license, they were limited to dealing in their own wares, and might not, even if naturalized, become owners or masters of ships. By foreigners were meant all persons not born in the Kingdom of Castile, Leon, or Aragon. Later the territory to be born in which constituted one a native in the meaning of the law was extended so as to include Navarre, Valencia, and Catalonia. The class of persons known in Spain as natives was further extended by the decree of 1562, and made to embrace such foreigners as had been settled householders in Spain for ten years and had married a Spanish or an Indian woman. But residence, even for more than ten years, did not confer this privilege on bachelors. In 1608 the line was drawn somewhat more strictly. Twenty years of residence, including ten as a householder, were required; also marriage with a native or with a daughter of a foreigner born under Spanish dominion.

In order to avoid the effect of these provisions foreigners who were "not capacitated to trade, contrary to the known laws, sold their commodities to subjects and natives of these kingdoms, to be paid for them in the Indies, by which means the gold and plate brought from those parts was carried to other countries, and that very often before it came into Spain." (Veitia Linage, p. 127.) This practice led to the passage of special ordinances prohibiting it. These were confirmed at different times, and death and forfeiture of goods fixed as penalties for their violation. An attempt was, moreover, made to prevent foreigners from trading in the Indies by ordering that persons residing there should not purchase commodities of foreigners, on pain of forfeiting half their property and of being returned to Spain as prisoners. By a later law foreigners were forbidden to reside in the Indies, and those already there were expelled; yet in the course of time the harshness of this law of expulsion was toned down by lax execution. In spite of the severe measure taken against foreigners attempting to trade with the Indies or residing there, it was decreed that foreigners residing in Seville and at adjacent ports, although they might not engage in the India trade, should nevertheless be obliged to contribute to the fitting out of armadas and fleets and to all other expenses borne by the Spaniards.

The intimate relation between the King and his American dominions necessitated a regular organized system of postal communication. As early as 1514, by a royal warrant, Dr. Galindez de Carvajal was made postmaster of the Indies, and by a subsequent order of the Council of the Indies, issued in 1525, all persons were restrained from interfering with him in the dispatch of messages concerning the affairs of the Indies. The lines of this service covered the distances between Seville and the other ports and Madrid, as well as the distances between Spain and America. The postmaster of the Indies was an officer of the India House. His duties were "to receive all dispatches sent by the president, commissioners, or other officers, or by the prior and consuls, and other persons trading, to the Indies." He provided means for sending messages to the court and to the various ports by keeping post horses at certain stations. The service was rendered by persons appointed by the postmaster, who were prohibited from making any charges above the rates fixed by law. The customary

speed at which messages were transmitted under this system was thirty leagues a day. Rigorous laws enjoined all persons from intercepting and opening letters and packets. Of the amount paid for this service the postmaster was allowed one-tenth part.

The laws and ordinances contain abundant details concerning the organization and control of the royal navy and fleets of merchant ships engaged in furthering the India trade. The admiral or captain-general held the chief command, and while on the sea was clothed with power which was essentially absolute; yet he was under oath "that he would not avoid death in defense of the faith, of his master's honor and right, and of the public good of the kingdom." The admirals and vice-admirals, before beginning to exercise the functions of their offices, were obliged to present their commissions and instructions to the officers of the India House, and to furnish the required security that they would faithfully perform the duties of their offices, or meet whatever fines might be imposed upon them. The amount of the security demanded varied according to the dignity of the office, ranging from 300 ducats, in the case of the physician, to 5,000 ducats in the case of the admiral.

After having crossed the bar of San Lucar, the admiral's vessel took the lead, the other vessels followed, the ship of the vice-admiral held her position in the rear, and the other men-of-war kept to windward of the merchant vessels. If any ship strayed from the fleet, a fine was imposed upon certain of her officers, and they were excluded for a series of years from making this voyage; but if a ship was willfully taken from the fleet, the guilty officers suffered death and forfeiture of property. After putting to sea the admiral or vice-admiral examined all the ships. If goods were found that had not been properly entered, they were confiscated; and if passengers were found without license, they were set on shore at the Canaries, and sent back to the prison of the India House.

The effect of the restrictive policy as carried out through the India House was disastrous to both Spain and her American possessions.

The population of Spain declined, her manufactories were ruined, her merchant marine ceased to exist except in name, her capital was diminished, foreigners carried on her commerce by means of contraband, and all the gold and silver of the New World found its way to other countries than Spain. (Mitre, Historia de Belgrano, I, p. 23.)

Professor Cairnes says that "about the middle of the eighteenth century," when, according to Robertson, "the exclusive trade to America from Seville was at its height," the freight that was carried to America in the legal traffic of Spain with her colonies "did not exceed 27,500 tons." (Political Essays, p. 12.)

To surround the violation of commercial regulations with all the terrors of the law, it was provided that in case foreigners should succeed in entering Spanish American ports the inhabitants should not trade with them, on pain of death and confiscation of property. But these laws were not effective. The number of foreigners in the seaport towns and the amount of foreign trade increased, and in certain quarters, particularly at Buenos Ayres, the contraband trade very early exceeded the legal trade with Spain. In fact, the city of Buenos Ayres outran in its growth other towns because of the great advantages of the contraband trade over the legitimate trade.

Not only in commerce, but also in agriculture, was the Spanish policy restrictive. As late as 1803 orders were received in Spanish America from Spain to root up all the vines in certain provinces, "because the Cadiz merchants complained of a diminution in the consumption of Spanish wines." (Hall, Journey, II, p. 244.)

Spain objected also to the cultivation of tobacco in Spanish America, and the inhabitants were prevented from raising flax, hemp, or saffron. The cultivation of the olive was forbidden, lest it might limit the market for Spanish oil. If in Buenos Ayres the inhabitants were allowed to cultivate grapes and olives, it was only "by special permission, and only in sufficient quantity for the table."

The Spanish policy with reference to the American possessions not only imposed restrictions on industry and commerce, but also on the movement of population. The violation of laws concerning this latter subject was punished with confiscation of property, one-fourth of which went to the informer and the rest to the royal treasury. Although the policy respecting migration reveals a vicious tendency to hedge about popular movement with too many restrictions, it must be admitted that some of the regulations indicate a humane spirit on the part of the makers of the law. Such was the requirement that no slave who was married should be allowed to go

to the Indies without his wife and children. The restrictions on emigration necessitated a slow increase in the population of the Spanish colonies, and thus permitted a more complete assimilation of the Spaniard to the Indian type than would have been possible had the emigration to the colonies been unrestrained and rapid.

But the people of Spanish America complained that the restrictions which were imposed upon them sacrificed the well-being of a continent to the ignorance and selfishness of the Spanish court and its privileged adherents. If a settler on the bank of the Rio de la Plata wished some article of European production, for a long time the route by which it could reach him in the course of legitimate trade was from Seville to Porto Bello, from Porto Bello across the Isthmus to Panama, from Panama to Lima, and from Lima across the continent to its destination. The effect of this, except in a few favored places like Lima and the City of Mexico, was to prevent the use of European wares and to compel the settlers to accept such substitutes as they were able to produce or obtain from the Indians. In other words, the trade restrictions which were imposed upon the colonists, instead of permitting them to start with the advantages of the achievements of European civilization, in many cases drove them back to the barbarism of the aborigines and doomed them to go over again the painful way up to civilization which their ancestors had trod in Europe. To go from Spain to America, except to a few privileged places, was not merely to go into exile, but even to renounce civilization. And not only this; for by reason of the restrictions placed on agriculture and the industries, as well as on trade, one was not given a free hand with which to work his way forward. It is true there were no legal hindrances to the raising of cattle on the vast and fertile plains of the Argentine. But the natural ports of this region were closed, and there was no outlet toward the civilized world for the products of these ranges except across the continent to Peru, over the Isthmus to Porto Bello, and from Porto Bello to Spain once a year. With a limited population and no exit, and with practically unlimited herds, the value of these herds disappeared. In the early years of the eighteenth century, even after the port of Buenos Ayres had been opened to the extent of admitting two small vessels annually, an ox was

worth $1, a sheep from 3 to 4 cents, and a mare 10 cents. The prices had risen to this amount from a still lower point under the influence of the demand made by these vessels for hides, strengthened by the larger demand of the contraband trade of the English and Portuguese. It was clear enough to the people of the Argentine that to them a closed port meant poverty and a free port prosperity. Their opposition to the Spanish policy, and, in fact, to the Spanish rule, which appeared in the beginning of this century was no sentimental opposition, but rested on the hard basis of economical considerations. As economical considerations were conspicuous in the motives of the Dutch in revolting against the authority of Spain, and furnished also an important ground of the action which the thirteen English colonies took against the mother country, so the industrial and commercial restraints with which Spain hampered the economical development of South America constituted a standing grievance and had great weight in ultimately determining the people to make themselves free. The intensity of the evils of restriction was decreased in the course of time, but for this no thanks were due to the authorities of Spain. The Spanish policy failed because it involved an irrational scheme. It failed because it undertook permanently to contravene the normal operation of economic forces. It broke of its own weight, and it left the people to whom it had applied with a weakened sense of their obligations to uphold the law.

The inhabitants of Spanish America, with unimportant exceptions, revolted against the protective system which had been imposed upon them. Prominent among the exceptions were the little towns of Panama and Porto Bello. As long as all trade to the greater part of South America had to pass the Isthmus, these ports, as points for the collection and distribution of the wares involved, maintained a degree of relative importance. They were naturally interested in the continuance of the royal policy. But the great bulk of the people desired freedom. They saw that governmental restrictions on trade were likely to be made in the interests of a few persons, or of certain limited sections. Buenos Ayres, standing on the Atlantic shore facing Europe, objected to being made by law the extreme frontier, and the insignificant concession of 1618, which permitted two ships of 100 tons each to enter the port

annually, failed to satisfy their commercial ambition. The inhabitants of this and other isolated provinces recognized that the commercial regulations violated their interests, and they were driven to decide between upholding a law which sacrificed their well-being and giving countenance to a violation of this law through which would come prosperity and progress. The result here was what might have been expected. The vast extent of the border of Spain's possessions made it impossible for her to guard it efficiently. Smuggling could, therefore, be carried on with impunity, and the high prices which had been given to European wares in America by the system of restriction constituted a sufficient inducement to lead the merchants of other nations to engage in contraband trade.

The discovery of the passage around Cape Horn opened new currents for the trade with Spanish America. With this, the Pacific ceased to be an inland sea of the Spanish dominions, reached only by crossing Spanish territory. It was entered by all nations, and the doctrine of the freedom of the sea, which was later formulated by Hugo Grotius, was introduced in practice. Here was the beginning of the end of Spanish monopoly. Both the eastern and western coasts of South America were infested with English, French, Portuguese, and Dutch traders, who carried their contraband wares to nearly every Spanish-American port; but nowhere were the effects of this smuggling more marked than in the development of Buenos Ayres. Here the commercial nations, by trading either directly or through the Portuguese settlements in the neighboring territory of Brazil, particularly through Colonia, gathered, as General Mitre has said, "the best fruits, which Spain in her blindness denied to herself." "The contraband trade constituted the true commerce, and its operations were carried on with the regularity of a lawful act for the protection of the common interest. The merchants of the port had agents for this purpose in Rio Janeiro and Lisbon, and even in Seville;" and the traffic was conducted in complete security, undisturbed by the authorities, who were unable to suppress it, and "had to tolerate it or consent to it, as a fact or as a necessity." (Mitre, Historia de Belgrano, I, p. 42.) Nowhere else in the history of the world has contraband trade been so

regularly and thoroughly organized as here. Under it, to use the words of Merivale—

Buenos Ayres rose from an insignificant station to a considerable city, merely from being the center of the contraband traffic between Europe and Peru. The Spaniards guarded their coasts with an expensive maritime force, while they resorted in the interior to the strange measure of making smuggling an offense cognizable by the Inquisition. But all such efforts were fruitless to check the force and violence of the ordinary trade. The flotas and galleons sank to insignificance; and their owners were glad to make these licensed squadrons serve for introducing the contraband commodities of other nations. (Colonization and Colonies, pp. 15, 16.)

X.—SOME EUROPEAN MODIFICATIONS OF THE JURY SYSTEM.

By Dr. WALTER B. SCAIFE.

The French Revolution introduced the modern jury system upon the continent of Europe; Napoleon made it a part of his code; it entered into the creed of the political agitators of 1848, and has since been adopted by almost every country of the Continent. Be it understood, however, that it is employed only in criminal matters, for the great majority of continental jurists are practically a unit in considering this institution ill adapted to the settlement of civil disputes growing out of the complicated relations of modern life.

One of the French jurists has well said: "Of all the positions of trust which the law can confer on a citizen, there is not one which requires more of discernment, of independence, and of morality" than that of juryman, and a study of the political movements and reforms on the continent of Europe for the past century will show the profound interest which the jury has excited there, while the number of laws that have been enacted with a view to bringing good men into the jury box and regulating their action according to the best principles testifies to the fact that the author above quoted but voices a general conviction. If we only pause to consider that to the judgment of the twelve men in the jury are intrusted fortune, reputation, liberty, nay, even life itself, can the dignity of their office be too strongly emphasized? Can too much stress be laid upon the necessity of providing legal methods which will prevent men unworthy of such dignity from being chosen to that high office? Can we, as members of a self-ruling people, regard it as a burden to be called upon to fulfill our part in the execution of such laws?

In contrast with the old idea that it is the monarch who judges an offender against the laws, the jury is the embodiment of the theory that any person charged with a crime against society

shall be judged by his equals, chosen with his consent from the community where the crime has been committed. The conception of trial by jury includes not only the actual hearing in the court room and the making of the verdict in the jury room, but also the preliminary stages of the investigation before the matter is brought to the notice of the jury whose voice is to decide the fate of the accused. The method of conducting these preliminaries, the manner of selecting the jurymen, the form of examining the witnesses, and the part played by the accused; the duties of the presiding judge, the kind of questions submitted to the jury, and the way of answering them; finally, the latitude of the jury's powers, all have been subjected on the continent of Europe to numerous modifications of theory and fact, a study of which not only offers interesting historical material, but may also be of use in seeking to improve our own methods of administering justice.

On the 29th of March, 1790, Duport introduced into the National Assembly of France a project for the reorganization of the judiciary, in which it was proposed to elect the judges by the people and to employ juries as judges of fact in both civil and criminal matters. He made a long speech, largely devoted to the praise of the jury system, which was received by the Assembly with hearty applause. Toward the close of it he said:

> I have thought that everyone, seeing in the judicial organization his life, his happiness, and his liberty, would desire to have that organization as perfect as possible. You will have a justice prompt, ready, and, above all, impartial. Your judges will be honored, because they will be useful; because they will be few; because they will no longer be debased by an absurd hierarchy. You will have justice and laws explicit and within the understanding of everyone. Finally, the organization of the judicial power will be such that you will have nothing to fear from it for the public liberty, and such as will restore to France honesty, freedom, and good morals.

Other projects were offered, and the discussion was continued at intervals for a month, when the Assembly decreed that the jury should be established, but for criminal matters only. The decree was carried by a large majority, while the spectators loudly demonstrated their approval. However, it was not until September of the following year that the law as a whole was passed, and the new organization did not go into effect until the 1st of January, 1792.

As this law is the beginning and practically the foundation of all the legislation on the Continent in reference to the jury system, it will be worth our while to examine it somewhat in detail. Duport had said in his famous speech that "every man can be utilized for unearthing a fact;" and as only questions of fact were to be given to the jury, leaving all matters of law in the power of the judges, everyone enjoying full rights of citizenship was made eligible to act as juryman, and it was further provided that only crimes and the graver misdemeanors should be submitted to this form of trial. An officer to be known as "director of the jury" was to make the preliminary examination and prepare the case for presentation to a jury of eight members, called the jury of accusation, which corresponded to our grand jury. These decided by majority vote whether or not the accused was to be committed for trial.

With the exception of the clergy and septuagenarians every man in the enjoyment of civic rights was required to enroll himself in the district register, from which the preliminary lists for the juries were made up every three months by the designated officials. Service on the jury was obligatory, though no one could be compelled to serve more than during one session per year, or to have his name on the preliminary list for two years in succession.

When the accused was arrested in accordance with the decision of the jury of accusation, the law required that within twenty-four hours of his arrival at prison he should be examined by the president of the court which was to try him, and this in the presence of the public prosecutor and of the recorder. Only after this hearing could the accused have the assistance of counsel. Unless there was special cause to the contrary, it was the duty of the court to proceed to trial at the first following session.

Then came the formation of the jury. From the two hundred names on the preliminary list of the department the public prosecutor had the right to challenge twenty. The others were placed in an urn, from which the president of the court drew the names of the trial or petit jurors. The accused had the right to challenge twenty of the names drawn without assigning cause, and others for cause, of the validity of which, however, the court was to be judge.

The day of trial arrived, the president and three assistant judges take their places on the bench, the accused is brought

into court unshackled, the twelve jurors are called into the box, and, in the presence of the public, the King's attorney, and the parties to the trial, the following oath is administered to each juror separately:

> You swear and promise to examine with the most scrupulous attention the charges brought against N. N., not to communicate with anyone until after your declaration, not to listen to hatred or malice, to fear or affection; to decide according to the charges and the means of defense, following your conscience and your inmost conviction with the impartiality and firmness which beseem a free man.

The witnesses were required to take an oath "to speak without hatred and without fear, to say the truth, the whole truth, nothing but the truth." Furthermore, the counsel for defense was put on oath, and in this, it seems to us, we might well take a lesson from the old French law. There, before the assembled public, he solemnly swore "to employ only the truth in the defense of the accused." If we could have such a law, with the added sanction that on proof of violation of his oath a lawyer could be fined for the first offense, suspended for a certain time from practice for the second offense, and disbarred for the third violation, we firmly believe that there would be fewer acquittals of criminals brought about by lying pathos based upon imaginary innocence when the speaker knows the contrary to be true.

But to return to trial under the first French law. The court being constituted, the president commences the trial with the examination of the accused, which is followed by that of the witnesses; all the questions being posed by the president in person, even those demanded by the public prosecutor and the counsel for defense. After the arguments of the attorneys and the résumé of the president, the formal questions to be answered by the verdict are given to the jury, and they retire to their room for deliberation. The two principal questions are, if the fact charged is certain, and if the accused is convicted of having committed it. The vote is taken on each question separately, the juror placing his hand on his heart and declaring his answer "on his honor and conscience." He then confirms his vote by depositing a white or black ball in a box of corresponding color. One of the judges and the King's commissioner are present. The result is declared afterwards in open court. The law did not require the unanimous vote of the twelve jurors, but on the other hand made no provision for a

new trial in case of disagreement. But if the accused had three votes in his favor he was permitted to leave the court room a free man.

The French Revolution was inaugurated in the name of liberty; but the era of the worst of all tyrannies was at hand—that of the mob led by demagogues; and the safeguards of justice, recently copied from the freedom-loving Anglo-Saxons, and hailed as the palladium of civil liberty, were to be distorted into almost unrecognizable forms, and become the instruments of the most frightful legal butchery on record. The Paris mob was thirsting for blood, and one of their number came to the bar of the National Assembly on the 16th of August, 1792, and complained of the slowness of the jury trials, remarking with fiendish sarcasm, "It appears that an indictment is a patent of immortality." On the following day was decreed the formation of the first of those special courts whose sanguinary activity is the greatest blot on the history of recent civilization.

The jury was indeed retained, but with ever decreasing independence. At first elected by the different sections of Paris and the nearest departments of France, the jurymen were later named by the convention, practically by Robespierre, whose tools they were. It is related that at the opening session of the first extraordinary court, each juryman, before entering the box, stepped upon a platform and said: "People, I am such a one; have you anything with which to reproach me? Judge me, before I have the right to judge others." Later they neglected almost all formalities, and inquired scarcely more than the name, age, and calling of the accused. One day, in a sitting of only one hour and a half, they passed judgment on sixty of their fellow-citizens; and on another occasion one of the jurymen remarked that "priests and nobles were game for the guillotine." In the early stages of this decadence twelve jurymen were still required for a trial, though the votes of a simple majority were sufficient to convict; but the number of jurors was gradually reduced to seven, of whom a majority, that is to say, four of Robespierre's "solid jurymen," could send the accused to death. Beginning with most of the formalities of the English jury trial, these were gradually abolished by succeeding laws, until there was practically nothing left of that institution but the name. Perhaps the worst innovation was that one proposed by Robespierre, which required the president of the court to demand of the jury, in

case a trial continued more than three days, "If their conscience was sufficiently informed," and in case of an affirmative answer, all further proceedings were stopped and the verdict rendered, by which means all possibility of defense was cut off. Bad as was this law, it gave place shortly after to one still more damnable, which permitted the jury, of its own motion, to make the same declaration at any stage of the trial, even at the beginning. Such was the true basis of the disgraceful rapidity of the later trials, which enabled infamous juries to dispose of 1,696 cases in the short interval from June 10 to July 27, 1794, condemning 1,400 persons to death, of whom 76 received their sentence in a single day. Amidst the horrors of this orgie of blood the cases of Danton and Robespierre afford a good illustration of poetic justice. The former was principally responsible for the law of March 10, 1793, which instituted the court that afterwards condemned him to death; and before the ax fell upon his neck he begged the pardon of God and man for the part he had taken in it. Robespierre opposed at one time the employment of the jury, but having been successful in seating permanently his "solid jurymen," he then called the institution "the conscience of the Republic." But the real conscience of the Republic finally condemned him to death through the court of which he had so long been the master, without, however, taking the trouble to call any jurymen into the box.

These iniquitous tribunals were fortunately of short duration. Meantime the ordinary courts, erected by the law of 1791, continued their activity with much less noise and more mercy, while a number of supplementary laws were enacted to facilitate the action of the new institution. Then Napoleon gradually rose to the zenith of his power and prepared to impose his celebrated code on the French nation. He was no friend of the jury system. However, the institution having already taken root in France, he was too shrewd to abolish it, but he showed that he "was only willing to let remain a worthless image of the jury." The consequence was that the code of 1808[1] retained the jury, though shorn of its most attractive features. It placed the choice of jurors almost entirely in the hands of the prefects, made employees of the Government

[1] This law was passed in 1808, but did not go into effect until 1810, and hence often bears the latter date.

eligible to sit practically all the time as jurors, and put a premium on their bringing in verdicts according to the wish of the authorities, in that the minister of justice was required to make an annual report "on the manner in which the citizens inscribed on the lists have exercised their functions." At the same time the grand jury was abolished and a secret preliminary examination authorized, which was a close approach to the former inquisitorial process, which, remarks Oudot, "was invented toward the end of the twelfth century, not for the rendering of justice, but for the extirpation of heresy." And this instrument of the inquisition it is which, reestablished by Napoleon, has been to a greater or less degree the model for all the great countries of continental Europe where, consequently, the grand jury is to-day unknown. Under this régime was renewed also the practice known as the "torture du secret," which enabled the accuser to retain his prisoner in secret confinement for an indefinite period without any communication with the world or any means of bringing his case to trial before an open court. Thus we see that of the institution which had been hailed as "sublime" on its introduction into the country there remained scarcely more than the shadow.

The Napoleonic law regarding trial by jury was altered in details from time to time during the succeeding years, and in 1832 the whole law regulating the administration of justice was codified anew. Jurors were to be at least 30 years of age, and in order to convict the accused the verdict must be established "by a majority of more than seven voices." Let us note also that the president of the court was permitted to be in the jury room during the deliberation, a provision which has been recently introduced into the code of Geneva with good results. According to article 350, "The declaration of the jury shall never be subject to any appeal."

By the right of conquest Belgium passed in 1794 from Austrian into French power, and received with other French laws that of trial by jury. But in 1814 she was taken from France by the powers and annexed to Holland, which did not then possess the jury system, nor has she since seen fit to adopt it. But the Belgians liked their twenty years' experience of it, and when they gained their freedom by the revolution of 1830 they provided by their constitution of the following year that trial by jury should be adopted in all criminal

matters, in all political offenses, and in those of the press. According to a law of the same year the jurors were to be elected; but this was changed in 1838 to a system of forming a list in each district by the deputation to the provincial council, and these local lists were united and reduced to one-half by selection, exercised by the president of the court of assize, with the aid of two other judges, a system which, in its main features, is still preserved by the law of 1892.

The year 1848 is memorable for its political uprisings, when the fever of intense desire for civil liberty spread like an epidemic over Europe. The disease attacked the body politic in all its members, and in none more severely than in the arm of justice. Here the universal remedy advocated for local application was the jury system. Before the year closed laws establishing the new jury courts had already been formulated and adopted by six German States, including Wurtemberg, Saxony, and Bavaria. The following year four more of the German States, of which Prussia was one, fell into line; and the middle of the century saw even conservative Austria adopt the jury system. She took, however, an early opportunity of abolishing it, though she afterwards reestablished it, and has since retained it in good faith. The year 1850 found also Victor Emmanuel's Kingdom of Sardinia making use of the jury; and the law of April 2, 1865, which provided a uniform judiciary and procedure for the whole kingdom of united Italy, assured the benefits of the same system to the entire peninsula, except the portion then still remaining under the sway of the Pope. Even in Russia, the land of absolute monarchy, the jury system found entrance in 1864; and not least among the good deeds of the late lamented Czar was the institution of a commission on the 7th of April, 1894, for the complete revision of the judiciary system. In conferring the presidency of the commission on his minister of justice, Mouravieff, the Czar remarked that he wished all his subjects to have justice. The powers conferred on the commission were most extensive; and it is to be hoped that the new Czar will continue the work thus inaugurated by his predecessor. In his opening address to the commission, on the 30th of April, Mouravieff said, among other matters, that the attention and labors of the commission should be directed to "the examination of the working of the jury in all its aspects, and to the measures to which this examination should give rise, with the aim of regulating and improving

the participation of the social element in the administration of justice." The most recent great member to be added to the sisterhood of European States is the German Empire; and on the 1st of October, 1879, two laws of 1877 went into effect, which assured to the entire country the employment of lay judges in all criminal matters.

Everywhere expectation ran high on the introduction of the jury system, which many regarded as the corner stone of the new palace of democratic liberty. Disappointment followed, because perfection had been looked for and was found wanting. Hence new laws have everywhere been made, seeking to improve the system, which, though still imperfect, is better than any of its predecessors. Instead of entering into the history of these changes, our time will perhaps be more profitably occupied in considering some of the provisions which may be regarded as tending to improve the working of the system. The law of the German Empire expressly declares that the office of juror is an honorary office and can only be filled by a German. In Belgium a juror must be either a born Belgian or else a foreigner who has received what they call "la grande naturalisation"—that is, has been naturalized by a special legislative act. The most Catholic of countries, such as Austria, Italy, and Belgium, make the clergy incapable of acting as jurors, while the Republic of France and some of the monarchies do not permit domestic servants to sit in the jury box. Not only are criminals and persons charged with crimes or misdemeanors denied the same office, but by the laws of several countries bankrupts can not sit in judgment on their fellow-citizens. In France, Germany, and quite generally on the Continent the juror must be at least 30 years of age, the lawmakers of those countries judging that for the decision of weighty matters affecting the life and honor of the citizens, men of mature years and experience of the world should be required. All the countries make service on the jury obligatory, except for certain classes excluded or exempted, and except for certain specific reasons, which are clearly defined by the law, and not left, as with us, to the civility or obsequiousness of the judge.

However, it is not every citizen of 30 years of age or more who is fit to act as judge; and though such a doctrine was advocated in France at the time of the Revolution, there is not a country of importance on the Continent to-day which has not made provisions by which it tries to eliminate the incapable

and secure for jurors men of at least fair average capacity. In general, there are various commissions for making up preliminary lists and annual lists; then finally from this last the twelve men are drawn by lot whose judgment is to decide the fate of the accused. The preliminary lists are usually open to public inspection during a certain period, in order that any well-founded objections thereto may be filed. The Swiss canton of Neuchatel has tried since 1880 the system of electing the jurors by popular vote, and the president of the city reports to the writer that the system works quite satisfactorily. Each election district makes up a list every three years to be voted on at a general election, the number elected to be in a certain proportion to the number of inhabitants. The federal judiciary of Switzerland was reorganized by a law of 1893 which contains a provision for the election of one juror for every thousand inhabitants. Elections take place once in six years, and every Swiss entitled to vote is eligible to service as juror.

All countries allow to the public prosecutor and to the accused a certain number of challenges to the names of the jurors drawn by lot, in general twenty, and that without giving any reason therefor; and Germany expressly forbids by law the uttering of the motive. It is also a very general custom on the Continent to place in the jury box one or two extra men, called deputy, supplementary, or assistant jurors, who are chosen and sworn like the first twelve, but who have no function to perform, unless, by reason of accident or illness, one or other of the regular jurors be hindered from fulfilling his duties, in which case the vacant place is occupied by the deputy who has necessarily been present during all the preceding part of the trial; and the case goes on without interruption. Before the trial commences the jurors are everywhere sworn to fulfill their duty as such. The form of this oath varies in different countries, but is in substance generally the same. However, in some of the Swiss codes there is a provision which is not usual and which seems to us to be valuable, namely, every juror swears to keep secret the deliberations of the jury room. Thus incorporated in the oath, it is certainly calculated to impress much more strongly on the mind of the juror his duty in this regard than does a general law to the same effect, of whose very existence even, the juror may be ignorant. When it is recalled what a bad impression is often made on the public mind by the revelation of the conduct of the jurors in the

jury room, the value of such an addition to the oath becomes at once apparent. The provision should be accompanied by a law severely punishing anyone violating it.

We have already had occasion to remark that the grand jury does not exist on the continent of Europe, so far as we are aware, but that, on the other hand, the preliminary stages of criminal process there are quite different from those to which we are accustomed. There is, however, a general resemblance throughout the Continent, as all the fundamental ideas thereof have been taken from the Napoleonic code. As an example of the latest development along this line may be taken that furnished by the code of Neuchatel, bearing date of September 25, 1893. Here the examining judge and his deputies are appointed for three years by the grand council, or what we would term the common council. On the commission of a crime he can begin the examination either of his own motion, or on an order of the district attorney, or after complaint of the injured party, or denunciation by a third party. He must always be accompanied by an official clerk, who keeps a record of all that is done. According as he thinks best he may conduct the examination publicly or in secret. When he arrives on the scene of action just after the commission of an offense he may forbid that anyone leave without his permission; and in case it should be attempted he has the power to arrest, as he can also do if disturbed by anyone while conducting the examination. All objects which are deemed necessary for evidence during the future trial may be sequestered, and he has the right of domiciliary visit as well as that of arrest of any person suspected of the offense under examination. In this case the individual arrested must be examined within three days and either be released or sent back to prison on a proper warrant of detention. Throughout Europe anyone arrested on suspicion of an offense is subjected to a personal examination, and in the case of Neuchatel the provisions governing that examination are clear and explicit, as, for example: "No one may refuse to render to the judge an account of the deeds imputed to him." "The questions to the suspected person should be posed in such a manner that he may render account of all the charges brought against him, and let him be placed in a situation to justify himself." "It is formally forbidden to the judge to employ threats or other means of constraint in order to obtain admissions from the suspected individual. It

is equally forbidden to raise hope of lighter punishment if he makes confession." If the first hearing does not destroy the charges it is within the power of the examining judge, with the concurrence of the district attorney, to issue a warrant of detention. Then follows the examination of the witnesses, who are not called upon to take an oath except under unusual circumstances, but they may be warned of the consequences of false testimony; at the same time the law protects them from abuse by the judge, and allows complaint against him where a witness believes himself mishandled. The examining judge having finished his work to his own satisfaction, or as far as the circumstances permit him to go, the papers are then made up and sent to the district attorney, who, with his opinion thereon, forwards them to the indictment chamber.

This is the body which really corresponds to our grand jury; but it is in perfect contrast with the same, both in numbers and composition. Every year the judges of the court of appeals are required to designate from among themselves, taken in turn, three of their number, who form for that year the indictment chamber. The president of the court is, however, excluded from their number, for in case of appeal he should preside; while none of those who have acted on a case in its preliminary stages is competent to give voice on it in its later development. This chamber has the supervision of the examining judge, and can overrule his work in every particular, as well as discipline him in case of maladministration. It decides the matter of indictment without seeing the accused or any of the witnesses, but simply on the examination of the record which is submitted to it. Its decision must be rendered within four days, and determines what court shall try the case and the nature of the action to be brought.

If, on the other hand, it is found that the accused has been arrested and subjected to inconvenience and disgrace without sufficient ground, the indictment chamber has the power not only to set him at liberty, but also to adjudge him a proper indemnification, with discretionary power to condemn the plaintiff to the payment of a part or the whole of the sum allotted. Similar power is also conferred on the courts of assize in case of a verdict of not guilty, and the idea is said to be gaining ground in other parts of Europe. It certainly does seem just that the Government—that is to say, the public—should be compelled to pay an indemnity to one to whom

it has caused without sufficient reason so much uneasiness, shame, and disgrace, not less than is the case with a private individual who has effected a false imprisonment. In Germany there exists a school of jurists who protest vigorously and without ceasing against the secrecy and one-sidedness of the preliminary examination and demand from the Government the passage of a law which will provide public defenders as well as public prosecutors, which will make every step of the case public from the very beginning, and which will enable an individual suspected of crime to defend himself judicially, and with full knowledge of the evidence against him, from the moment when suspicion first falls upon him.

The continental criminal courts have, as a rule, three judges, one of whom is president; and on him it devolves to conduct the trial. His activity, however, is very different from that of umpire, as it were, between accuser and accused, to which we are accustomed. The president literally conducts the trial; that is, he interrogates the accused and the witnesses, and may even call witnesses of his own proper motion whose hearing has not been demanded by either party. In Switzerland all parties have the right to ask questions of the witnesses, as have also the jurors; in Germany they have the same right, but must first demand its exercise of the presiding judge; whereas in Italy they must ask the questions through the president, or obtain his permission to ask them directly. The accused is the first person examined, the president being provided with the record of the preliminary interrogatory to see if he makes any changes in his account of the matter. Then follows the examination of the witnesses, who in some courts are not sworn at all, though still liable to punishment for perjury in case of giving false testimony; in others they are sworn after giving their testimony, while elsewhere, as in Italy, they are sworn before testifying. When all the testimony is concluded the parties or their attorneys have the word. Some of the laws confer on the accused or his counsel the right of the last word before the case is given into the hands of the jury, while Germany and Italy have followed the Anglo-American method of authorizing the presiding judge to sum up the testimony and instruct the jury on the law to be applied. Before the jurors retire to their room for deliberation the president poses the questions which the verdict is to answer by yes or no. Our simple formula of "guilty or not guilty" seems to be

unknown on the Continent, where a number of questions more or less complicated are given to the jury, each one of which must be answered separately. These questions are not unfrequently interdependent, and of such a nature as to be unintelligible to the average juror, so that the result of the verdict has at times been entirely different from that intended by the jurymen themselves. The newer codes, as that of Neuchatel, have essayed to reduce the number of questions to a minimum; but even there not less than three are stated, and there may be a number of others. These three necessary questions are: (1) Did the accused commit the deed? (2) Did he commit the deed under such and such circumstances? (3) Is he guilty? For the rendering of the verdict not a single one of the continental countries requires the unanimous vote of the jury, and most of them are satisfied with a decision of the majority. In case the required number of votes for condemnation is not secured, instead of there being a new trial, the accused is set at liberty and can not be again tried for the same offense.

The spread of democratic ideas during the century has had its counterpart in the constantly increasing powers conferred on the jury. The French Republicans of 1790 did not dream of making the jury the judges of anything beyond the mere fact, i. e., whether or not the act charged had been committed by the accused; and, as expressly stated by Duport, it was for that reason that every citizen was declared capable of acting as juror. The law of 1832, however, conferred a new power upon the jury, which was intended to better the administration of justice, but which has proved in its consequences to have been a disastrous error. This was the provision which permitted the jury, in case the accused was found guilty, to declare the existence of extenuating circumstances, in which case the court was to apply a milder degree of punishment than the law otherwise called for. Thus the jury became in a manner judges of law as well as of fact, and a privilege that should have been exercised on rare occasions, when there really existed circumstances which moved to pity for the prisoner, has developed by abuse into the unpardonable habit of declaring the existence of extenuating circumstances in the very worst cases, as was done in 83 per cent of the cases of assassination tried in France during 1887. Thus the basest of criminals have received much less punishment than the law intended, and another result, much more serious still, is also

attributed to the same cause, namely, the cases of repetition of offense by the same individual have increased to the most alarming proportions; for, on the introduction of this law in 1832, the number of such cases was but 7,300 in all France, but before 1890 they had increased to the astounding number of more than 90,000 per annum. M. Loubet,[1] who has made a special study of this matter, believing that the principle is good though the practice has been more direful than beneficial in its results, recommends as a remedy, first, that anyone who has already been condemned for a crime shall not enjoy the privilege of the law on extenuating circumstances, and second, that the jury shall be required in all cases to give their reasons therefor when declaring the existence of extenuating circumstances.

The nearest approach to these reform ideas of the French jurist which I have found in existing legislation is in the code of Neuchatel, which provides that if from the hearing it appears that one or several special extenuating circumstances exist the president of the court shall add to the ordinary questions submitted to the jury the following: "Did the accused commit such an act with such or such extenuating circumstance?" In the German Empire, on the contrary, it is within the province of either the prosecuting attorney or the defense to demand the submitting of the general question, "Do extenuating circumstances exist?" The Italian code of criminal procedure provides that the president of the court shall notify the jury that if by a majority vote they hold that extenuating circumstances exist in favor of the accused they shall so declare in due form. The Genevese code goes to a still greater extreme, and makes it one of the functions of the jury to declare not only the existence of extenuating circumstances, but to declare the existence of very extenuating circumstances, by which latter judgment the normal punishment of the offense under consideration is reduced to one-fourth. This excessively democratic code confers on the jury a still further power, namely, after the verdict has been rendered in open court, in the presence of the accused, the code provides that "the court and the jury retire to deliberate on the application of the punishment."

The jury system has gradually been accepted as a fundamental institution by nearly all the civilized countries of the

[1] L. Loubet, La Justice Criminelle en France, Paris, 1890.

world. Everywhere its advent has been hailed with rejoicings as for the coming of a savior from the oppression of tyranny, while its results have given rise to almost universal disappointment. What conclusion are we to draw therefrom? Not that the institution is bad, but that, like all human inventions, it is defective. The perfection which had been looked for not being realized, murmurs of discontent arise on all sides. But rational discontent, which leads to thoughtful criticism, is healthful. Even the judicial massacre known as the Reign of Terror has been shown by a German writer[1] to have been less horrible than it would otherwise probably have been, by reason of the action of the jury, bad, corrupt, and unscrupulous as it was. Any system, however good, may be perverted by the action of bad men; and the worst system may be ameliorated in its working by the efforts of the upright. The ideal, though unattainable, toward which we should ever look and struggle, would be the best system administered by the most capable men. Upright and intelligent men exist in every community, and it is for the electors to choose them. In order to secure the best jury system it is helpful, and indeed necessary, to study the past experience of ourselves and others in order to avoid the errors and to profit by that which has proven valuable. Hence this outline of some European experiments.

[1] Adolf Buchner, Die französischen Revolutionstribunale und das Geschwornengericht. Erlangen, 1854.

XI.—THE REGULATORS OF NORTH CAROLINA (1765-1771).[1]

By Prof. JOHN S. BASSETT, of Trinity College, North Carolina.

The recent publication of The Colonial Records of North Carolina must lead to the rewriting of much of the State's colonial history. The several writers who, before the appearance of these volumes, have written on The War of the Regulation have been handicapped by having to use as sources of information narratives that have been prepared by one or the other of the parties to the struggle. They have not had access to the now published mass of documents, which, as might have been expected, throw new light on many features of the movement. The desire to use this light has inspired the present paper. It

[1]The Regulation is one of the best written about subjects of North Carolina history. Caruthers treats it extensively in his Life of Dr. David Caldwell (1842). He went carefully over the ground and obtained a great deal of his material from old men who had once been Regulators. He is entirely on the side of the Regulators. Caruthers also treats of the subject, but not extensively, in his Revolutionary Incidents (first series), pages 24 et seq. Dr. F. L. Hawkes has a sketch in Cooke's Revolutionary History of North Carolina (1853), pages 13 et seq. It deals chiefly with Husband's Sermons to Asses. Jones treats the matter in his Defence of North Carolina (1834), pages 34-56. Wheeler publishes Husband's book under the heading of Orange County (see his History of North Carolina, Vol. II, pp. 301-331), and Martin and Williamson, in their histories, have treated it as fully as the nature of their works would admit.

Dr. T. B. Kingsbury published several short articles on the subject in Our Living and Our Dead (see Vol. II, p. 434; Vol. III, pp. 39, 314, and 629). The subject is also treated in the North Carolina Journal of Education, October and November, 1859, and in Wiley's Sketch of North Carolina.

All the above, except Martin and Williamson, are apologists of the Regulation. At first in the history of the State everyone seems to have followed the accounts of Tryon and his followers as set forth in these two histories. It was about the time that Jones's Defence was published that there came a change in sentiment. Since that time nearly everything written has discovered in the Regulation a worthy struggle for liberty.

One book recently published, Colonel Waddell's Colonial Officer and His Times, is an exception to this rule. Writing from the standpoint of the

is believed that at least two new points in regard to the Regulation may now be taken as historical truth.

(1) The Regulation was not attempted as a revolution. It was rather a peasants' rising, a popular upheaval. This is a chief new point which, it seems, a study of the records should reveal. A revolution involves a change of the form or principles of government. It is constitutional in its significance. A peasants' rising aims at a change of agents who administer, or of the manner of administering, affairs under principles or forms that remain intact. It is a matter of party, chiefly. A revolution may embrace a popular rising, and a popular rising may run into, or in a manner partake of the nature of, a revolution; but we may always find the general difference just mentioned. Could it have had any other fate than it did have, the Regulation might possibly have run into a revolution; but at the time when it was crushed it had not reached that stage.

(2) Another fact that the records emphasize is this: The Regulation was not a religious movement. It was rather of an economic and political nature. It was not only not religious, but it had the opposition of at least four of the five leading denominations in the disaffected district. The Established

biographer of one of the chief men who joined in suppressing the Regulators, Colonel Waddell has been led to form an opinion unfavorable to them. Many of his points are well taken.

There are two contemporary accounts of the movement. The more important of these two is An Impartial Relation of the First Rise and Cause of the Recent Differences in Public Affairs in the Province of North Carolina, 1770, pages 104. This work, on what seems very good grounds, is usually attributed to Hermon Husband. It is a well-written statement of the first part of the struggle. It contains many documents and is usually reliable. It is reprinted in Wheeler's History of North Carolina, II, 301–331. The other book is A Fan for Fanning and a Touchstone for Tryon, by Regulus, Boston, 1771. The author of this work is unknown. It has been ascribed to Husband, but the internal evidence is against such a view. Governor Swain thought it was written by Shubal Stearns, a Baptist preacher from New England, who was living in Orange in 1771. It is not nearly so exact a statement of facts as the Impartial Relation, being characterized by wordy complaints against Tryon and the other officers. It was reprinted in the North Carolina University Magazine, Vol. VIII, 193 and 289. The most valuable of all sources is The Colonial Records of North Carolina, Vols. VII and VIII. They contain the documents of the Regulators, the records of the courts and of the assembly, the reports of Tryon to the home government, and many other documents bearing on the subject. They have been freely used in this paper.

Church, of course, opposed it. The Presbyterian pastors united in a letter to the governor, in which they assured him of their "abhorrence of the present turbulent and disorderly spirit that shows itself in some parts of this Province." They also wrote a circular letter enjoining all good Presbyterians to have nothing to do with the Regulation.[1] This letter was read at a muster in the Presbyterian county of Rowan, and perhaps in Mecklenburg, and was of good service in securing volunteers to march against the Regulators in 1768.[2] It was signed by David Caldwell, Henry Patillo, Hugh McAden, and James Creswell, names of the highest respect in the history of this denomination in North Carolina. The Baptists were perhaps the strongest in numbers in the vicinity. Morgan Edwards, who in 1772 traveled through this region gathering materials for a history of the Baptists, could hear of but seven Baptists who had joined the movement, and these, in accordance with a regulation of the Sandy Creek Baptist Association, were excommunicated.[3] In 1768 Governor Tryon attended divine service at a German church in Mecklenburg County, and the minister "recommended with warmth a due obedience to the laws of the country."[4] This same minister accompanied the troops to Hillsboro and preached before them there. The Quakers were the only other considerable sect in the vicinity, and they took practically the same position that the Baptists took.[5]

It is not to be thought, however, that members of these separate churches did not join the Regulation. They joined freely, but all the evidence goes to show that it was not from religious motives. Hermon Husband declared that they were of all sects, and that the leaders were of the Established Church.[6]

To understand properly the struggle which we are about to investigate, we must first acquaint ourselves with the physical

[1] Colonial Records of North Carolina, VII, 813–816.

[2] Ib., VII, 822 and 886.

[3] Ib., VIII, 655–656.

[4] Ib., VII, 821.

[5] Dr. S. B. Weeks, whose forthcoming work on Southern Quakers and Slavery is announced as this monograph goes to the press, is authority for this statement. With such excellent verbal authority, the writer does not hesitate to print the above assertion in advance of the published work.

[6] Wheeler: History of North Carolina, II, 315. See, also, Purefoy's History of Sandy Creek Association, pages 69–73, where Morgan Edwards is freely quoted.

characteristics of the locality, the social condition of the inhabitants, and the political institutions of the colony. To these preliminaries we turn.

THE BACK COUNTIES.

The topography of North Carolina reveals on the east a broad alluvial plain. This is intersected by numerous rivers, along whose banks lies much rich low ground. West of this section is a broken region of red clay soil thickly netted by small streams, which makes the head waters of the larger rivers of the plain. Farther west are high, mountain-studded plateaus, which modern railroad facilities are showing to be perhaps the grandest scenery on our eastern Atlantic Slope.

It was in the second of these divisions that the Regulation had its home. At the time of which we write this region was usually known as "the back counties" or "the back country." It is hilly upland, and its fertile soil is well suited to the growth of grains, grass, and fruit. At the middle of the eighteenth century it was covered by large forests of oak and hickory, broken here and there by open prairie-like tracts of good grass. To a passing observer the country is much like that of eastern Pennsylvania or central Maryland. Indeed, it is part of a continuous geological formation which lies just east of the Appalachian foothills and extends in a southwest direction from Pennsylvania to northern Georgia.

As the Keystone State marked the beginning of this formation, it was also the gateway through which came most of its population. The fertile soil and the liberal government of the Quaker drew to his colony at an early day a strong tide of immigration. So great was the stream that there was soon an overflow. Newcomers willing to pay good prices for land induced the former owners to sell their holdings and seek others from the cheaper lands of the wilderness. Thus began a stream of humanity very much as the water in a natural depression rises till at last it breaks over the hills and cuts a channel through the plain. The course taken was to the southwest. The Virginia valleys were filled. Across the boundary into North Carolina[1] poured the tide. But here there was a halt.

[1] Mr. Woodmason, who seems to have visited North Carolina in 1766, writes: "Africk never more abounded with new monsters than Pennsylvania with new sects, who are continually sending out their emissaries

Along the lower western valleys of the Yadkin a counter current from the South was met. The home seekers scattered themselves around in all directions, carefully picking out the best land. They moved to the west till they reached the mountains. A few hunters ventured across and found wide, sloping stretches of luscious grass. With alacrity the mountain gates were thrown open and the conquering host marched through. It was the beginning of "the winning of the West." When viewed in its entirety the whole movement seems a romance.

The people who led this movement were of pioneer lineage. While still in Europe they had behind them a century of frontier life. Early in the seventeenth century James I moved many Scotchmen to Ireland with an idea of converting the country to Protestantism. In this he failed. The Protestants lived separate from, and often hostile to, the natives. The tide of Puritanism that swept over the country left them mostly Presbyterians. The country was not a home for them. The soil was poor, and consequently many of them turned their faces to the New World. From their association with the two countries they were called Scotch-Irish. They made ideal frontiersmen. While others came in their rear and settled close upon them, they were still usually the ones to push on to the next stop, ever restless and fearless.

It was shortly before 1740 that this tide reached North Carolina. Coming down from Virginia, it ran along the head waters of the Yadkin, Haw, Neuse, Tar, Catawba, and Deep rivers, until the whole country from what is now the vicinity of Raleigh on the east to the neighborhood of Morganton on the west was taken up. So rapid was the movement that Governor Tryon reports that in the summer and winter of 1765 more than 1,000 immigrants' wagons passed through Salisbury, most of which were bound for parts of North Carolina.[1] Among those who came one can easily distinguish Scotch-Irish, Germans, Moravians, Welsh, and many Englishmen.

around." His narrative, though utterly untrustworthy in regard to most that he says, shows that it was generally understood that the newcomers, especially the Baptists, were from Pennsylvania. (Colonial Records, VII, 286, 287.)

[1] Those that went on were for Georgia and Florida. Some of these came back to North Carolina. (Colonial Records, VII, 248.)

Besides those who came through the Pennsylvania doors, there were considerable numbers from New England, New Jersey, and Maryland. They came by families or by friendly bands, and occasionally by congregations. They placed themselves as chance or association directed. The Germans settled in the district now embraced by Cabarrus and parts of the adjacent counties. The Moravians took in common ownership the beautiful tract near Salem which they now hold in severalty. The Welsh settled chiefly in Duplin. The New Jersey people located in what is now Davie County, and the Quakers placed themselves in what is now Randolph and Guilford. Around Hillsboro there were many people, but they seem to have been drawn from many different localities.

The eastern plain had been the first part of the colony to be settled. Convenience of transportation and the desire for fertile river shores operated to group the earliest settlers along the water courses. In the extreme east streams were so numerous that the whole country was practically on water routes. This region was soon settled. Conditions here were favorable to slave labor,[1] and by the end of a century's growth the coast region was fairly full of fine estates and wealthy families. Although there were many of the middle class settled around them, these older families were the influential factors in the State and in society. Old settlers, with traditions of their own, and connected chiefly with the State religion, they had no sympathy for the new men of the hills.

There was also a natural barrier between the two sections. This was a sparsely settled region of pine forest, stretching monotonously from the valley of the Roanoke on the north to that of the Cape Fear on the south. It was so far from the coast that it was traversed by few rivers, and those were hardly navigable. It contained but little "bottom" land and had to wait for the day of railroads and cotton cultivation before it was developed.

Cut off thus from the men of the east, the men of the "back counties" felt no more sympathy for the former than they received from them. The merchants to whom they hauled

[1] There were very many more slaves in the east than in the west. In 1766 in Orange there were 33 whites to every 6 blacks. In Johnston there were 10 to 5. In Perquimans there were 5 to 10, and in Brunswick there were 2 to 11. (Colonial Records, VII, 288, 289.)

their produce at Cross Creek[1] were either Scotchmen or had come from Pennsylvania with the rest of the country. The Presbyterians received their first ministers from the Synod of New York and Pennsylvania, and later on sent their own ministerial students to Princeton College. Hermon Husband corresponded with Dr. Franklin. The author of the Fan for Fanning printed his work in Boston.[2] Indeed, it is likely that the inhabitants of this region knew more about Philadelphia at that time than about Newbern or Edenton.

The life of the people was that of the pioneer. The necessaries of subsistence were plentiful, but luxuries were few. Some old men who had been Regulators told Caruthers that about the time of the Regulation there was not a plank floor, a feather bed, a riding carriage, or a side saddle within the bounds of their acquaintance.[3] Yet at this time considerable advance had been made toward the cultivated habits of older communities. Many churches had been built, though they were often but rude structures. In Orange there was a regularly settled parish clergyman who had his church in Hillsboro. Farther out in the county were several chapels which were served by readers.[4] In Rowan a clergyman had been provided, but the Dissenters were making it difficult for him to enter into his living.[5] Within this district the Presbyterians had four pastors, each of whom had more than one charge. The Germans had pastors there also.[6]

The Baptists had been organized for some years. In 1758 the Sandy Creek[7] Association was formed. Only two of the churches in it were within the district of the Regulators, but

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[1] Now Fayetteville.

[2] This same author shows his feeling for the east as follows: "And such has been the fate of Newbern and other places in North Carolina that for many years they were erected an asylum for all such as fled from their creditors and from the hand of justice, and such as would not live by working elsewhere, men regardless of religion and all moral obligation. Hence it was refugees from the western governments and from Connecticut, found a safe retreat in North Carolina, particularly on the seacoast and places adjacent." (Quoted by Swain in Univ. Magazine, Vol. IX, p. 465.)

[3] Life of Caldwell, pp. 139, 140.

[4] The site of one of these chapels was selected afterwards for the seat of the University of North Carolina.

[5] Colonial Records, VIII, 202–210, and 502–507.

[6] Ib., VIII, 727–757.

[7] Sandy Creek was in what is now Randolph County. It was the central field of the Regulation.

there were more churches ten years later.[1] The Quakers erected their meetinghouses almost as soon as they arrived. Schools were beginning to be built up. Some of the pastors were pedagogues as well. Still, it is well to remember that these schools were new and had been in operation hardly long enough to influence materially the adult population. The slight glimpse that we have into the religious life of all of these people shows them to have been honest, sturdy, and independent, and perhaps not always easily managed by their pastors. Coming from a land of liberal ideas of government, they expected to maintain their share in public affairs. Without broad political information, without communication or sympathy with the predominant element in the government of the province, and with strongly impetuous natures, they were just so conditioned that they were likely to redress grievances by other than constitutional measures.

The political institutions were not of a nature to suit a people like these. The constitution left them a very small share in government. The exercise of the executive, the judicial, and, to a large extent, the legislative functions was in the hands of the central royal officeholders.

The governor was appointed by the King, and represented the royal prerogative. With the council, he was the chief executive agent. The councilors were appointed by the Crown, usually on the recommendation of the governor, and they could be relied on to take the side of the prerogative. The chief justice was regularly named by the Crown. The governor in council appointed the county justices and the chief justice, temporarily, when there was a vacancy, and the two associates.[2] Out of council he appointed the officers of the militia, and selected the sheriff from three freeholders whose names had been submitted by the county court. He must also approve a bill before it became a law, and he was commander of the militia. It was thus that his influence was paramount. Not being paid by the people's assembly, he was not afraid of it.

There were two systems of courts, the superior and the inferior. The former was divided into six circuits, which were traveled twice a year. The chief justice and the two associates

[1] See Purefoy's History of Sandy Creek Association, 62–65.

[2] Colonial Records, VII, 690, 691.

held it. Its ministerial officers were appointed by some agent of the central authority. The inferior court was the county court. It was held by the justices of the county and was in nearly every respect the sole unit of local government. The sheriff executed its command, usually through his deputies, of which there was a liberal supply. He also collected all the taxes. The county and parish taxes were levied by the county court, and the sheriff returned the same to them. The appointing of the clerks of county courts was unfortunately arranged. There was a clerk of the pleas, a relic of a past office, whose position was now a sinecure, and he appointed the clerks of the thirty-four county courts. The salaries of these clerks ranged from £50 to £500 a year. The clerk of the pleas let out the county clerkships to those who paid him the most rent for them. By this means he had an office which paid him without the least labor £560 a year. Governor Martin said, in 1772, that the county clerks used their influence to get into the assembly, where they were able to keep this arrangement from being abolished.[1]

The assembly was bicameral. The upper house was the council. The lower house was elected by the freeholders. Elections were held by the sheriff, but there seems to have been no strict oversight of the polls. Furthermore, there were no party lines. The influential men brought out a man as candidate, and he usually received the election. When a bill had been passed in both houses and signed by the governor, it must be approved by the board of trade before it was a permanent law.

The result of all this was that in each county there were a certain number of men who were likely to have in control all the offices. This is suggestive of what we to-day are accustomed to call "court-house rings." The disadvantage was that the continued effectiveness of government depended too much on the personal honesty of these officeholders. In many of the eastern counties this state of affairs seems to have worked well. But in the remote sections there is much evidence that the officers were selfish and mercenary, and that they were mutually leagued together to forward their own selfish ends. It was to try to clean out this Augean stable that Regulation had its existence.

[1] Colonial Records, IX, 264–266.

THE GRIEVANCES OF THE REGULATORS.

The grievances of the Regulators were excessive taxes, dishonest sheriffs, and extortionate fees.[1] Each of these was made more intense by the scarcity of money. The stamp-act trouble does not seem to have had any immediate influence on this movement. That the people of the back country sympathized with the Sons of Liberty and could have been aroused to help them had the discontent spread from the Cape Fear inward is undoubtedly true, but this whole movement passed over before the Regulation came into existence.[2]

The charge of excessive taxation was only relatively true. Taxes were apportioned by the poll. A taxable was an adult white man or an adult black man or woman. A rich man thus paid no more than a poor man in actual money. This injustice was emphasized as between the east and the west by the fact that the wealthy gentlemen of the former section relied on slave labor, while slaves were comparatively few in the west.

The manner of collecting taxes made the burden still heavier. The tax bills, although questioned by the Regulators, seem to have been correct.[3] In a frontier region, where money was scarce and local trading was confined almost entirely to barter, it was not always convenient for the farmers to keep money in their homes. But throughout the country there were men who lent small sums to the countrymen when there was a sudden demand for cash. Consequently, when the

[1] In 1771 Governor Martin said that he was told on every side that a chief cause of these troubles was the fact that Earl Granville had no agent in the colony who would give deeds for his lands. The settlers accordingly took possession of the lands, but refused to pay taxes for the same. This caused trouble with the sheriffs. (Colonial Records, IX, 49.) Granville's land office was closed from 1765 (Ib., VIII, 195), and it is likely enough that the result was as just stated, but the fact that in the many statements of the questions at issue no prominence is given by either side to this cause is the author's justification for not putting it into the body of his text.

[2] It is well to remember, also, that the leaders of the resistance to the stamp act were among those who afterwards were most active to suppress the Regulation.

[3] The tax bill for 1767 was 7s., besides county and parish dues. This is what Tryon told the Regulators (Colonial Records, VII, 794), and from the items in the bill for 1768 it foots up the same amount. (Ib., VII, 772, 773.) Here it seems there are two bills, the latter of which is that for 1768. The items in the bills were referred to the laws authorizing them.

sheriff would come unexpectedly to the taxpayer, the latter would propose to get the money if the officer would accompany him to the home of this neighborhood banker. The officer usually refused to do this and proceeded to distrain on some property, taking a fee of 2s. 8d. for the same. The taxpayer would then hasten to his neighbor's, secure the needed money, and hurry after the sheriff. That officer would take a different route than the one he had promised to take, and the luckless pursuer would arrive in Hillsboro in time to see his property sold to some friend of the officer's for much less than its value. The Regulators charged that officers played into each others hands for this purpose, and that there were men in Hillsboro who had made large sums by dealing in such business.

The sheriffs were thought to have taken another step in defiance of popular justice when the assembly in 1768 passed a law requiring the sheriffs to attend five different places in each county, at least two days in each place, during January and February of each year, in order to collect the taxes. If the officer found it necessary to call at the home of the ratepayer for his due, he took an extra fee for doing it. The people of Orange regarded this law as passed at the instigation of the sheriffs. Husband declared[1] that the sheriff insulted the people in it, and added that the officer "might have said the asses were obliged to bring their burdens to him in order that one of his deputies might collect the whole in ten days, sitting on his breech, at ease, in five places only."[2]

[1] Wheeler, History of North Carolina, II, 305, and Colonial Records, VII, 771, 772.

[2] It has been stated that the tax for the governor's palace, which was erected in Newbern in 1765–1770 at a cost of £15,000, had much to do with working up the discontent that culminated in the Regulation. There is, however, no evidence that the palace deserves so much distinction. Among all of their complaints the Regulators refer to it only rarely. They seem to have considered this a slight abuse as compared with other matters. (Cf. also Caruthers: Life of Caldwell, p. 106.) It is also stated at times that the expense of running the Cherokee boundary line was a cause of the Regulation; but there is very slight reference to it in the published complaints of the Regulators. The fact that Maurice Moore in his "Atticus" letter arraigned Tryon for these two pieces of extravagance seems to have led most writers to assume that these were important causes of the troubles that came later. Moore served against the Regulators, and his letter indicates that he hardly understood the movement. He certainly does not say that the Regulators considered the two occurrences just cited as efficient causes of their oppression. (Colonial Records, VIII, 718.)

Another very prominent grievance was the dishonesty of the sheriffs, who failed to pay into the hands of the public treasury the money they had collected. The public accounts were most inefficiently kept. There was a prevalent opinion among all classes that there was fraud just here. In 1767 Governor Tryon declared it as his opinion that "the sheriffs have embezzled more than one-half of the public money ordered to be raised and collected by them."[1] This, he said, was due to the remissness of the treasurers, who feared to sue the sheriffs, lest the friends of these latter should combine to defeat the treasurers of re-election. He made several attempts to secure a statement of all such arrears, and finally in 1769 John Burgwin was appointed to prepare a statement of the condition of the public accounts.[2] In the following year he made his report,[3] when it appeared that the several sheriffs were in arrears to the extent of £49,000.[4] Many counties were in arrears for ten years, and some accounts reached back to 1754. A good deal of this was reported as worthless. In some instances neither principal nor securities were worth anything, and at times they had all run away. More than half of the amount in arrears, however, was reported good. This was especially true of the eastern counties, which were generally paid up until 1765. The bad debts and the long arrears were mostly in the frontier counties—that is to say, in Anson, Orange, Johnston, Rowan, Cumberland, and Dobbs.

The failure to pay into the treasury the amount collected led to an irritating misunderstanding between the governor and the assembly. In 1760 the provincial government issued £12,000 in currency, to be redeemed by a poll tax of 1s. levied each year till the whole amount was sunk. The following year £20,000 was issued, to be redeemed by a poll tax of 2s. In 1768 the assembly, after trying in vain to get a new issue of

[1] Colonial Records, VII, 497; also, VIII, 105.

[2] Ib., VII, 984.

[3] Ib., VIII, 278–281.

[4] This is the amount due for years preceding 1770. There was about £15,000 due for that year, but the report being made out in that year many sheriffs, especially those inclined to pay slowly, had perhaps not had full opportunity to settle with the treasurers when the report was gotten up. To include the amount for this year is therefore hardly fair to the sheriffs. The assembly of 1771, second session, decided to distribute in the counties printed copies of Burgwin's report. (Ib., IX, 124.) At the same time they ordered the treasurers to prosecute the delinquents. (Ib., IX, 217.) As a result a fair proportion of the arrears was collected. (Ib., IX, 572–576.)

paper currency, resolved that enough money had been collected to redeem these two issues, and that consequently the sheriffs should no longer collect these two items in the tax bill.[1] By this means they thought they would lessen taxation and prevent the volume of currency from decreasing. The governor, however, vetoed this resolution, because, as he said, he had not seen a statement of the moneys paid into the sinking fund.[2] Two years later such a statement was prepared, and it shows that at the time in question but little over £25,000 had been burnt since 1760,[3] so that if they had devoted all moneys collected for the sinking fund to redeeming the two issues just mentioned there would still have been nearly £7,000 unredeemed.[4] The failure of the governor to agree with the resolution to cease to collect the 3s. as indicated caused a clash in the authority of government and gave rise to a great deal of misgiving among the people.[5] Had the sheriffs paid in their arrears this trouble would have been avoided.

Extortionate fees was perhaps the greatest grievance of all. Nearly all the officers were paid in fees. The people of the back counties complained heavily of their officers, and in support of their complaint the Orange County Regulators produced affidavits sufficient to satisfy the most skeptical that they were right.[6] As soon as counties were organized on the frontier, sheriffs, clerks, registers, and lawyers swooped down upon the defenseless inhabitants like wolves. Further than this, the people charged that the superior and county courts conspired to aid the officers in escaping punishment. The fee of a lawyer was fixed by law, but, like usury laws of our own day, it was difficult to enforce this law. The officers would manage to resolve a service for which a fixed fee was due into two or more services, and for each they would demand a fee. Both lawyers and court officials were thought to be in collusion to postpone cases in order that they might get more fees.[7] The court business was sadly behind, much to the incon-

[1] Colonial Records, VII, 922, 923.

[2] Ib., VII, 986.

[3] Ib., VIII, 213–215.

[4] The sinking fund received money as follows: 1s. to sink two issues in 1748 and 1754; 1s. for the issue of 1760; 2s. for that of 1761, and 4d. a gallon on imported liquors. Perhaps not more than one-half of this fund should have been devoted to the sinking of the two issues in question.

[5] See Husband's account, Wheeler, II, 311.

[6] Colonial Records, VII, 771–782.

[7] Governor Martin, in 1772, supports the charge of malpractices by the lawyers. (Ib., IX, 340.)

venience of the people, who often were obliged to attend at a distance of from 30 to 60 miles. This was true to such an extent that in 1766 there were nearly 1,000 cases on the docket of Halifax superior court, and no civil causes had been tried in any court in the province for six months.[1] The governor issued frequent proclamations to prevent illegal fees, but without avail.

Connected with and influencing each of these grievances was that of the general scarcity of money. The English colonial policy had the effect of withdrawing from the colonies as much gold and silver as possible. So scarce did this money become that in 1765 Governor Tryon said that there was only enough of it in the colony to pay for the stamps which under the Stamp Act would be required on the instruments of writing used in one year in the superior courts of the province.[2] The people desired to issue a paper currency sufficient in amount for the demands, but were restrained by an act of Parliament made for the protection of British merchants, which forbade the colonies to issue legal-tender paper. The assembly petitioned the King for a relaxation of this injunction, but was unsuccessful. Distress was everywhere; but in the east, where there were public warehouses for receiving commodities, it was less than in the west, where there were none; because the people used the warehouse certificates as a medium of exchange among themselves. An inhabitant of Orange related that at this time he had accompanied his father with a load of wheat to Cross Creek, now Fayetteville, where they received 5s. a bushel for the grain, but could get only one-fifth of the price in cash. His father returned home with 40s. and was able to pay his tax, which was more than his neighbors could do.[3]

All this was caused chiefly by a most shortsighted financial policy on the part of the provincial government. During the times of the French and Indian war the colony had made repeated issues of currency. After peace was declared in 1763 this began rapidly to be redeemed. So sudden and wide an extension of the money medium was bad in itself; but when in the face of an immense tide of immigration the currency began rapidly to contract the effect was calamitous. An idea of this

[1] Colonial Records, VII, 200, 201.

[2] Ib., VII, 144.

[3] Caruthers's Life of Caldwell, page 113. Colonel Saunders, with a singular lack of insight, says that this wheat was sold for a shilling a bushel. Why he should have said nothing of the 4 shillings in barter given also for each bushel is incomprehensible. (Cf. Colonial Records, VII, p. xix.)

may be gotten from the fact that in 1768 while the amount of money was decreasing about 10 per cent a year the population was increasing about 7 per cent a year.[1]

The inhabitants of the back counties, isolated from, and out of sympathy with, the dominant class in the province, were thus ready material to the hand of the political agitator. Weighed down by improperly adjusted taxes, dishonest officers, excessive fees, and an insufficient currency, the people only awaited the appearance of a leader under whom they might range themselves in opposition to their oppressors. The first man to appear in this capacity was Hermon Husband.[2]

THE LEADERS.

Husband was born in Cecil County, Md., October 3, 1724.[3] His family were Episcopalians, but Hermon with some other members of the family became Quakers.[4] He moved to North Carolina and settled at Sandy Creek, then in Orange County, but now in the northeastern part of Randolph. Here he accumulated considerable property. Our knowledge of him indicates that he was industrious, shrewd, honest, and much more intelligent than the average man of his neighborhood.[5] By his neighbors he was reported to have been either related to, or connected with, Dr. Benjamin Franklin. It is in evidence that he kept up a correspondence with this patriotic Quaker through John Wilcox, a merchant of Cross Creek, who went to Philadelphia twice a year to buy goods. In this way he received many political pamphlets of a patriotic character which he reprinted and circulated among the people. He got the credit of writing some of these, but it does not appear that he claimed the authorship of any of them.[6] The only one of these of which we have any definite account is a collec-

[1] Cf. Colonial Records, VII, 145, 288, 289, and 539, with VIII, 215.

[2] This spelling is used advisedly. Mr. Jacob L. Husband, of Baltimore, a relative of Hermon Husband, has a deed written and signed by Hermon Husband on January 7, 1769, in which the spelling is as here given.

[3] Penn. Mag. of Hist. and Biog., April, 1886, p. 119.

[4] Dr. S. B. Weeks, who has examined the records of the Quakers, has informed the writer that Husband was expelled from that organization, not because he was immoral, but because of divergence of views. This statement is also in advance of Dr. Weeks's forthcoming book.

[5] The deed referred to in note 1 was written by himself and is in good form, showing some legal knowledge.

[6] Caruthers's Life of Caldwell, pp. 119, 120.

tion called "Sermons to asses." It is adapted from a production of an English clergyman of republican tendencies and was published without the name of the author or editor.[1] Two sermons were on the nature of asses. One was from the text: "Issachar is a strong ass, crouching down between two burdens. And he saw that rest was good, and the land that it was pleasant; and he bowed his shoulder to bear and became a servant to tribute." The other was based on the biblical story of Balaam and his ass. Each contained homely truths vigorously stated.[2]

Husband's part in the Regulation has been overestimated. He was essentially an agitator, and his plan seems to have been to effect reform by means of public sentiment. When it became evident that the movement was running into violence he held aloof from it, only exerting himself to restrain excesses and to make peace.[3] His activity as a pamphleteer had given him such a reputation that it was impossible to convince the provincial government that he was not the chief leader of the popular side. The officeholders produced affidavits to show that he was in the crowd that perpetrated the Hillsboro riots;[4] but whether or not he helped to administer the thrashings that some received the deponents did not say. The fact that when a short time afterwards he was expelled from the assembly for printing a libelous letter to Maurice Moore no charge was made in connection with this riot may, perhaps, be owing to lack of evidence on this subject.[5] Had it been at all sure that he was concerned in the riots, he would likely have been so charged in the indictment. He was with the Regulators on the morning of the battle on the Alamance endeavoring to bring about an adjustment. When he saw that this was impossible he mounted his horse and rode away. Some have attributed this to cowardice, but it is noticeable that none of the writers who have talked with surviving Regulators have said that the Regulators accused him of deserting their

[1] It was erroneously supposed to have been adapted from Dr. Franklin's tract, "State affairs."

[2] These two sermons are abridged in Revolutionary History of North Carolina (W. D. Cooke, ed.), pages 19–28.

[3] In 1768 the Regulators declared that he was a "gentleman that had never joined the Regulators, had never been concerned in any tumults, and whose only crime was being active in trying to bring on the intended settlement." (Colonial Records, VII, 765.)

[4] Ib., VIII, 245–247.

[5] Ib., VIII, 268, 269.

cause. It is more probable that his whole conduct was in keeping with his Quaker principles of not actively participating in a fight. He was twice elected to the assembly, being expelled during his second term, and when the officers of Rowan County agreed to leave the dispute between themselves and the Regulators to a committee of arbitration he was put on that committee.[1] To escape Tryon's wrath he fled the colony and spent the remainder of his life in western Pennsylvania, where he was prominently implicated in the whisky rebellion. He was captured, tried, and condemned to death, but was released through the intercession of friends. He died before he could reach his home.[2]

There is no one who can be called a preeminent leader of the Regulation. Perhaps this is one cause of its failure. On the morning of the battle, when no one was found to command the people, some asked James Hunter to take command. His answer was characteristic both of himself and of the movement: "We are all freemen, and everyone must command himself."[3] Rednap Howell, James Hunter, and William Butler were leading spirits; yet there were, perhaps, others as prominent as themselves. Hunter was spoken of as their "general."[4] Rednap Howell deserves to be mentioned as the bard of the movement. He was from New Jersey and was a schoolmaster. With his homely songs he soon set the entire countryside singing at the expense of Fanning, Frohock, and others of their associates.[5]

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[1] Colonial Records, VIII, 521.

[2] See Caruthers: Life of Caldwell, pages 166–168.

[3] Ib., p. 163.

[4] Colonial Records, IX, 269.

[5] The following will suffice as specimens:

When Fanning first to Orange came
He looked both pale and wan,
An old patched coat upon his back,
An old mare he rode on.

Both man and mare wa'n't worth five pounds,
As I've been often told,
But by his civil robberies
He's laced his coat with gold.

—Life of Caldwell, page 116, note.

Also this:

Says Frohawk to Fanning, to tell the plain truth,
When I came to this country I was but a youth;
My father sent for me; I wa'n't worth a cross:
And then my first study was to steal for a horse.
I quickly got credit, and then ran away,
And hav'n't paid for him to this very day. —Ib., page 130, note.

All that is known of the Regulators' rhymes is reprinted in the *Raleigh Register*, June 2, 1825.

The most prominent leader on the opposite side was Governor Tryon. Much has been said to this man's discredit, but perhaps not all of it has been deserved. So far as the records show he was a man of decided executive ability, great tact, broad ideas, and much firmness. Like Strafford, his public character seems to be summed up in the word "thorough." Like most English gentlemen who were then sent to govern colonies, he expected to make money by the office, and he doubtless did it.[1] He was a genuine believer in the king's prerogative, and as governor he felt bound to permit nothing that would detract from it. From his standpoint it was enough for the people if they submitted to the benign rule of the fatherly King. He came to enforce this kind of government and at the same time to build up his private fortune. He found that the officeholders in the counties were the friends on whom he might rely to accomplish both purposes. He felt drawn to them, and when the people criticised them he interfered in their behalf. As representatives of his ideas of government he felt that they must be sustained. To accomplish his object he shrewdly, and perhaps heartlessly, used the means that politicians of the day were accustomed to use. To his mind a triumph of the Regulators would have been the first step toward undermining the royal authority. He came to North Carolina with an ambition to have a tranquil administration in what had hitherto been a troublesome colony. His very ideas doomed him to failure. It was his misfortune to be the governor just at the time when quiet was impossible.

Edmund Fanning, the local leader of the opposition to the Regulators, was born in Connecticut and was educated at Yale College. He was a man of fine address and superior ability. For some time he was one of the leading men in the assembly, and seems to have won the confidence of such men as Ashe, Harvey, Waddell, Harnet, Caswell, and Maurice Moore, all men of the greatest reputation for patriotism, and whose parts in the Revolution have secured for them consideration as the fathers of the Republic. Unfortunately for him he

[1] In 1769 Lord Hillsboro told Tryon that the reason he had not named him for the governorship of New York was that he had learned that he (Tryon) was getting more in North Carolina than the New York place paid. (Colonial Records, VIII, 190, 191.)

belonged to the office-holding class, and, like his associates, stretched his authority as much as possible, so as to take more money from the people. He said that he thought he had a legal right to take all he did take, and when he had been convicted the best experts of the law acquitted him of any criminal intent. Still, it is improbable that he fooled himself in such a manner as his claim would imply. He was most likely a full-fledged office-holding bird of prey, no better and no worse, except as he had more native ability, than the other members of the political cliques in the back counties.

EARLY DISPUTES.

The early history of North Carolina was not a quiet one. Besides the so-called Culpepper and Carey rebellions, which occurred under proprietary rule, there had been several disputes between the people and the royal authority.[1] While these difficulties have no direct connection with the Regulation, they show that the spirit of independence was abroad in the colony a long time before the day of the Regulators.

A notable outbreak of this spirit occurred in Mecklenburg County on the 7th of May, 1765. George Selwyn held a large tract of land in this region, on which he had settled many men who had not received deeds for their holdings. In 1764 Henry Eustace McCulloch was appointed agent for Selwyn, with instructions to survey these parcels of land, and either to close bargains for the same or to eject those who held them. McCulloch announced the price at which he would receive payment for the land, and in February, 1765, went up to have a settlement. The settlers indignantly refused to accept the proposition, offered him a smaller price, and when he refused to take it they forbade the surveyors to lay out the holdings. They also terrorized those who were willing to pay the price demanded, and declared that they would allow no sheriff to eject a settler for not paying it.[2] Finally, as John Frohock, Abraham Alexander, and others were about to survey a piece of the disputed land they were beset by the enraged settlers and most severely thrashed.[3] This brought

[1] See Colonial Records, VIII, pages vii–x.
[2] Ib., VII, 14–31.
[3] Ib., VII, 32–34, 37.

out a proclamation from the governor, which, so far as we know, brought quiet, and perhaps the success of McCulloch.[1]

The evidence we have in this case is all on the side of the agent, and it is accordingly unsafe to say who was in the wrong. At its face value, it indicates that McCulloch was acting entirely within his legal rights.[2] The incident is of importance only as revealing the turbulent spirits of the backwoodsmen and their vigorous method of redressing grievances.

This same spirit was strong in Granville and Halifax counties, where it was directed against extortioning officers. On June 6, 1765, it took a long forward stride when a gentleman of the Nutbush section[3] of Granville issued what has been known as "The Nutbush paper." It contained "an account of the deplorable situation we suffer * * * and some necessary hints with respect to reformation." The grievances of the people are stated as follows:

A poor man is supposed to have given his judgment bond for £5, and this bond is by his creditor thrown into court. The clerk of the county has to enter it on the docket and issue execution, the work of one long minute, for which the poor man has to pay the trifling sum of 41s. 5d. The clerk, in consideration he is a poor man, takes it out in work at 18d. a day. The poor man works some more than twenty-seven days to pay for this one minute's writing. Well, the poor man reflects thus: At this rate, when shall I get to labor for my family? I have a wife and parcel of small children suffering at home, and here I have lost a whole month, and I don't know for what, for my merchant is as far from being paid yet as ever. However, I will go home now and try and do what I can. Stay, neighbor, you have not half done yet. There is a d——d lawyer's mouth to stop yet—for you empowered him to confess that you owed this £5, and you have 30s. to pay him for that, and go and work nineteen days more; and then you must work as long to pay the sheriff for his trouble; and then you may go home to see your horses and cow sold, and all your personal estate for one-tenth part of the value, to pay off your merchant. And lastly, if the debt is so great that all your personal estate will not do to raise the money—which is not to be had—then goes your lands the same way to satisfy these cursed hungry caterpillars that will eat out the very bowels of our commonwealth if they are not pulled down from their nests in a very short time.

[1] Colonial Records, VII, 38.

[2] When the settlers petitioned to the governor and council for justice, that body decided that the affair was not cognizable before them. (Ib., VII, 34, 35.)

[3] The name Nutbush is employed now to indicate a township, a Presbyterian church, and two streams—Nutbush and Little Nutbush creeks—in the northern part of what is now Vance and Warren counties. Nutbush Township was divided by the boundary line of these two counties. It was formerly in Granville. (See Schaeffer's map of North Carolina.)

The author called on all the gentlemen of Granville to help in changing this condition of affairs. All were cautioned that if they tried they must "be careful to keep sober, nor do anything rashly" or "against the known established laws of our land." Who this author was is not known. He succeeded in getting up a petition to the assembly for redress of grievances, but nothing came of it. The officers retorted by suing the subscribers for libel and by having the author of the paper indicted and imprisoned. When Husband wrote, perhaps 1769, the suits were still in court.[1] Of so little consequence was the whole affair that knowledge of it did not reach Orange, the adjoining county, until 1767. It is chiefly important as illustrating the political condition of the back country in the time just preceding the outbreak of the Regulation.

This was not the only manifestation of the spirit of discontent. According to Husband, Brunswick, Cumberland, and other counties refused to pay their taxes as early as 1766. Of the results of these refusals we know nothing. From 1766 on all minor discontent is swallowed up by the events which soon called the attention chiefly to Orange and adjacent counties. It is to these events that we shall direct our attention.

THE SANDY CREEK ORGANIZATION.

What is usually spoken of as the Regulation in Orange is really two distinct movements. The one we may call the Sandy Creek Organization because it originated chiefly with Sandy Creek men; the other is the Regulation proper. The former represented a mild but firm protest against the wrongdoing of the officers and its transactions are summed up in the papers usually known as the Regulators' Advertizements I, II, and III.[2] The latter replaced the former. It was first known as "The Mob," but soon took the name "Regulation," from a South Carolina organization. It grew up when the former had failed and was dominated by a more turbulent spirit than was countenanced by the Sandy Creek organization. It eventually ran into such excesses that the militia of the province was called out twice against it.

The Sandy Creek movement began late in August, 1766, when at a county court there was issued a call for each neighborhood to send delegates to a meeting "at some place where

[1] Wheeler: History of North Carolina, II, 301, 302.

[2] These are found in Wheeler, II, 302, 304 and Colonial Records, VII, 249, 251, 252.

there is no liquor (at Maddock's Mill, if no objection), at which meeting let it be judiciously inquired whether the free men of this county labor under any abuses of power or not, and let the same be notified in writing if any is found, and the matter freely conversed upon, and proper measures used for amendment."[1] This call was read in court, whereupon the officers present acknowledged that it was reasonable, and Thomas Lloyd, one of the assemblymen of Orange, "declared his approbation of it" and suggested October 10 as a convenient day for the meeting.[2]

It is of advantage to note the relation of this movement to the stamp-act resistance. The call begins:

> Whereas that great good may come of this great designed evil, the stamp law, while the Sons of Liberty withstood the lords in Parliament in behalf of true liberty, let not officers under them carry on unjust oppression in our own province.

In closing, the paper says:

> Take this as a maxim, that while men are men, though you should see all those Sons of Liberty (who has just now redeemed us from tyranny) set in offices and vested with power, they would soon corrupt again and oppress if they were not called upon to give an account of their stewardship.

This passage indicates the sympathy between the Sandy Creek men and the Sons of Liberty. This was possibly due to the influence of Husband, whose correspondence with Franklin made him a center of patriotic ideas of a revolutionary nature. There is no evidence of any connection between the Regulation proper and the stamp-act troubles.

The idea of giving an account of their stewardship gave the officers an excuse for not going to the meeting at Maddock's Mill; for although they had at first promised to go, yet when on October 10 twelve delegates were met there the officers sent a messenger to say that they had decided not to attend, because the meeting claimed the authority to call them (the officers) to account. The messenger further announced that Colonel Fanning considered the meeting an insurrection.

The meeting, however, proceeded to draw up a paper, the chief features of which were as follows: Since the county was so large that not more than one-tenth of the voters could know in a reliable manner the qualifications of any man, it was

[1] Colonial Records, VII, 250.

[2] Husband. (See Wheeler, II, 303.)

deemed right that there should be an annual meeting similar to the one then convened, so that the people might investigate the actions of their representatives, and that the representatives might know the wishes of their constituency. Inasmuch as the matter was new in Orange, "though practiced in older governments," it was hoped that the officers would in time be more willing to submit their conduct to these meetings, and that the people could be brought to support the movement more firmly. This paper was read to the messenger, who "said that it was so just and reasonable that no man could object to it." A copy was given to him, which he agreed to deliver to the officers.[1]

The claim that representatives are responsible to their constituencies was at that time an innovation in the politics of the "back counties" of North Carolina. From the point of view of the officeholders it could not be allowed. Accordingly Colonel Fanning, either at the next county or general muster, read a paper "in repugnance to our requests." Husband did not know its contents. Fanning claimed that he had served it on the Sandy Creek men, but Husband says none of them ever saw it. It was probably but a more formal statement of Fanning's charge that the measures proposed were insurrectionary. Further than this, the officers made threats against the chief men of the movement, and when £50 had been collected to prosecute the offending officers it was found that the only lawyer on whom they could rely declined to take the case. In 1767 two men, one a justice of the county court, purchased jointly a copy of the revision of the laws of the province.[2] Two others copied from it the fees for registering conveyances and went before the court to register some deeds. The fees charged they thought to be illegal. They protested, but being threatened with arrest for contempt of court, they thought best to desist. The justice who was half owner of the law book then went to his partner, who had brought the book to the court, and asked him to be cautious how he lent it out. This he did, because there were so few of these books in this section that the court would easily know who had lent one of them. To this statement Husband adds: "Thus we may see how he apprehended himself under a necessity to conceal his good

[1] Colonial Records, VII, 251, 252, and Wheeler, II, 304.

[2] Davis's Revision, 1765.

offices and honesty to secure himself in office, but I suppose he was found out, for he was soon afterwards put out of commission." All these obstacles so discouraged the people that the Sandy Creek men abandoned their association.[1] Thus terminated the first movement against the officers.

THE REGULATION PROPER.

It was not till the spring of 1768 that any further organized resistance was made to Fanning and his associates. The immediate cause of this resistance was a notice posted by the sheriff of Orange, stating that he would, according to law, receive taxes at five specified places, and for all not paid there he would distrain at a cost of 2s. 8d. for each distress.[2] Many people considered this a misinterpretation or a violation of the law. Along with it came the rumor that the assembly had given the governor £15,000 for the purpose of building a residence.[3] The two affairs combined to bring about a new association, at first known as "The Mob," but later called "The Regulation."[4] The movement did not begin in the Sandy Creek neighborhood, but it spread rapidly. The Sandy Creek men refused to join, "because it was too hot and rash, and in some respects not legal." They tried to guide the movement and to modify

[1] This account follows Husband. See Wheeler, II, 302, 303.

[2] A careful examination of the law then in force fails to show any authority for this assertion. Laws of 1768, ch. 6.

[3] Affairs were further aggravated by the fact that the sheriff at first demanded 8s. 4d., which some paid. Later Fanning arrived and said that the tax should be 10s. 8d. Many paid this with much complaining. The people had lost confidence in their leaders, and not being able to find in the law books the specified tax bills, declared they were being defrauded. (Colonial Records, VII, 763, 764.) This was an error. Colonial Records, VII, 772, gives the items of this tax of 10s. 8d., and a comparison with the laws in Davis's Collections of 1765 and 1771 shows that the items as given in the posted notice were correct. (Collection of 1765, Vol. I, 146; Vol. II, 22, 192, and 222.) The tax to defray contingent expenses is cited incorrectly. Instead of being 1748 it should have been 1767–68. It was passed in 1759 for four years. In 1761 it was supplemented by 2s. tax. The original tax was continued in 1764 (chap. 8) and again in 1767–68 (chap. 18).

[4] The name Regulation was taken from a South Carolina organization formed to protect the people against the depredations of a lawless band known (from their leader, Colonel Schovel) as Schofilites. The affair was settled when the province established courts in the back counties, thus allowing the Schofilites to be brought to justice. (Quoted by Governor Swain from Johnson's Traditions and Reminiscences. University Magazine, X, 134, 135.)

its intemperance. A violent paper had been prepared and sent to the officers,[1] but these milder men persuaded the angered people to have another meeting, at which a new agreement was drawn up, as follows:

We, the subscribers, do voluntarily agree to form ourselves into an association, to assemble ourselves for conference for regulating public grievances and abuses of power, in the following particulars, with others of a like nature that may occur: (1) We will pay no more taxes until we are satisfied that they are agreeable to law, and applied to the purposes therein mentioned, unless we can not help it, or are forced. (2) We will pay no officer any more fees than the law allows, unless we are obliged to do it, and then to show our dislike and bear open testimony against it. (3) We will attend all our meetings of conferences as often as we conveniently can, etc. (4) We will contribute to collections for defraying necessary expenses attending the work, according to our abilities. (5) In case of difference in judgment we will submit to the judgment of the majority of our body.[2]

The former of these papers was received by the officers with a storm of indignation, the burden of which fell on the Sandy Creek men, who, from their association with the other affair, were never able to separate themselves, in the minds

[1] This paper read as follows: "Whereas the taxes in the county are larger, according to the number of taxables, than adjacent counties, and continues so year after year, and as the jealousy still prevails amongst us that we are wronged, and having the more reason to think so as we have been at the trouble of choosing men and sending them after the civilist manner that we could to know what we paid our levy for, but could receive no satisfaction. * * * We are obliged to seek redress by denying paying any more until we have a full settlement for what is past, and have a true regulation with our officers, as our grievances are too many to notify in a small piece of writing. We desire that you, our assembly men and vestrymen, may appoint a time before next court at the court-house and let us know by the bearer, and we will choose men to act for us. * * * We desire that the sheriffs will not come this way to collect the levy, for we will pay none before there is a settlement to our satisfaction, and as the nature of an officer is a servant to the publick, we are determined to have the officers of this county under a better and honester regulation than they have been for some time past. Think not to frighten us with rebellion in this case, for if the inhabitants of this province have not as good a right to enquire into the nature of our constitution and disbursement of our funds as those of our mother country, we think it is by arbitrary proceedings that we are debarred of that right; therefore, to be plain with you, it is our intent to have a full settlement of you in every particular point that is matter of doubt with us, so fail not to send an answer by the bearer." (Colonial Records, VII, 699, 700.)

[2] Wheeler: History of North Carolina, II, 306.

of the officers, from the later movement.[1] The Regulation proper was now fairly launched, and the launching was with such violent language from the officers that many who had not before concerned themselves with the affair joined it outright.

On April 4 the Regulators met again and requested the late sheriff and a vestryman to meet a committee of Regulators, on a day to be selected, with a list of the taxables for each year and a list of insolvents, together with a statement of all disbursements of the public money. They desired also that their assemblymen would be at the same time and place "to show us law for the customary fees that had been taken for deeds," etc. Two men were appointed to convey this request to the officers, but before they could set off there occurred such a storm of popular fury that the whole matter took an entirely different aspect. A Regulator's mare, saddle, and bridle were seized and sold on account of one levy. A party of angry Regulators at once rode to Hillsboro, where they rescued the mare[2] and where some of the most uncontrolled spirits fired some shots into the roof of Fanning's house, by way of venting their spite. The Regulators claimed that they were provoked to this by a gentleman who came to the door with a pistol and threatened to fire on them.[3]

Colonel Fanning was at that time attending the superior court at Halifax. Lieutenant-Colonel Gray, who commanded the militia in his absence, reported the matter to his senior officer and was ordered to embody at once seven companies of militia to oppose the Regulators. At the same time Fanning sent a warrant from the chief justice for the arrest of William Butler, Peter Craven, and Ninian Bell Hamilton, who had been leaders of the rescuing party.[4] The militia assembled at once, but it was found that of the seven companies only 120 men presented themselves with arms in their hands,[5] and that

[1] It was perhaps due to this fact that the officers were not able to dissociate Husbands from the Regulation proper.

[2] Some old men, "of great respectability," told Caruthers that the mare was sold to an officer for the amount of the levy and that the Regulators repaid this and restored the property to the former owner. (Life of Caldwell, pp. 118, 119.)

[3] Colonial Records, VII, 764.

[4] Ib., VII, 705–707.

[5] The others gave as an excuse the bad weather and said they would rather pay the fines than attend muster. (Ib., VII, 743.)

very few of these could be relied upon to act against the people. It was the opinion of the officers that not over 150 men could be found in the county who could be depended on in the emergency. At this time, according to Husband, not more than one-half of the people had joined the Regulation.[1] The remainder, it seems, were so strongly in sympathy with the Regulators they would not fight against them. The officers were also, perhaps, a little frightened. They decided to make a truce. This, so they wrote Fanning, was solely to gain time. They appointed three men to meet the leaders of the Regulators on April 20. Whether this meeting was held or not we do not know; but through the influence of the parish clergyman, Rev. George Micklejohn,[2] a further meeting was appointed for May 11, at which it was promised that matters would be definitely settled.[3]

On receiving this news Fanning set off at once for Hillsboro to take command of his regiment. Arriving there he reported the condition of affairs to Tryon. His ideas of the Regulators were based entirely on the paper which they had hastily sent to the officers, but which they had afterwards modified. He accused them of swearing to pay no more taxes, to kill all officers who tried to collect taxes, to prevent the execution of the decrees of the courts, and to arraign all officers before "the bar of their shallow understanding," as well as of desiring to become the "sovereign arbiters of right and wrong."[4] He thought, however, that he should be able to manage the situation and said that inasmuch as the succeeding week was court week he should wait till it had passed, and then on May 1 proceed to arrest the ringleaders of the opposition, sending them to Hillsboro for safety. He said that the insurgents had appointed May 3 a day on which they would surround the town, which, if their demands were not satisfied, they would burn. On this day he proposed to make a brave stand. It had been reported that they could bring large reenforcements from Anson, Mecklenburg, and Rowan counties. If these

[1] Wheeler: History of North Carolina, II, 308.

[2] The Regulators spell this name McEljohn. As a Scotchman he possibly had some influence over them. (See Colonial Records, VII, 764, 765.)

[3] See ib., VII, 710–712, for officers' letter.

[4] Fanning said that he was informed that the movement originated in Anson County. There is no evidence to support this. Fanning was loath to have the governor think his county had been so badly managed as to originate such resistance.

should come he desired the authority to call out the militia of other counties, though he was desirous of restoring order if possible without going out of his own county[1] for resources.

To this letter the governor replied in the most cordial manner. He offered to go himself to aid Fanning if the latter should think it necessary. He ordered the militia of Burke [Bute], Halifax, Granville, Rowan, Mecklenburg, Anson, Cumberland, and Johnston, to be held in readiness to march at the command of the Orange colonel, and instructed that gentleman to call out his own regiment "to repel all insurrections." He inclosed a proclamation to the people, which was to be published before decisive measures were taken.[2] Along with this letter came another of the same date, but in a milder tone. It was more conciliatory and was evidently intended to be read to the people. The council approved of this action of the governor, and declared the Orange trouble an insurrection.[3]

As to the charge of Tryon that the Regulators intended to burn the town on May 3, it is right to say that they denied it emphatically. Parson Micklejohn had induced five of their leaders to sign an agreement not to go to Hillsboro until the 11th of May unless there should be a distress for a levy.[4] These five had stipulated that this paper should be void if the majority dissented from it. The majority did dissent, because, as the Regulators declared, "it insinuated a falsity as though we intended violence, whereas in fact no such thing was designed, whatever private papers might be handed about by particular persons."[5] It was perhaps these "private papers" and other individual action that rashly brought the Regulation into trouble, making it very difficult for its more cool-headed leaders to manage it.

On April 30 the Regulators met and elected thirteen delegates to attend the meeting on May 11. They selected men in whom they could place confidence, regardless of membership in the association. One of the men chosen was Hermon Husband, who was not a Regulator at this time. The thirteen "settlers" were instructed to procure a list of the taxables for the terms of office of the two late sheriffs, with the number of insolvents and delinquents; to procure a fair account of the

[1] Colonial Records, VII, 713-716.
[2] Ib., VII, 717, 718.
[3] Ib., VII, 719-722.
[4] Ib., VII, 716.
[5] Ib., VII, 765.

taxes collected and the citation of the laws authorizing them; to obtain especially an account of the province, county, and parish taxes of 1767; to examine the fee bill to learn the cost of registering certain instruments. They were also required to take an oath pledging themselves to do justice between the officers and the people according to their capacity.[1] This paper was ordered to be sent to the officers. They also drew up and signed a petition to the governor and council which they laid aside to be used in case the officers should disappoint them in the proposed settlement. This petition came not as from Regulators, but as from "inhabitants of Orange County." It was signed by some not Regulators, notably by Husband, and there were more than 400 signatures.[2]

An unfortunate event here interrupted matters. On the same day the governor's secretary, one Edwards, arrived in Hillsboro and set up the proclamation mentioned above. On the next day Fanning put his preconceived plan into operation. Collecting twenty-seven armed men, mostly from the officeholders, he set out for Sandy Creek. He arrived there on the morning of the 2d of May, when the sheriff, thus supported, arrested William Butler, one of the Regulators, and Hermon Husband, who was not a Regulator, who had not joined in any tumult, and "whose only crime was his being active in trying to bring on the intended settlement."[3] The charge was inciting to rebellion.[4] The prisoners were taken to Hillsboro at once, where they were thrown into prison after a trial before a justice of the peace. Husband was ordered to be taken to the Newbern jail for safe-keeping.[5]

This so aroused the fears as well as the indignation of the people, both Regulators and non-regulators, that next morning 700 men were on their way to the town to release the prisoners. The officers, thoroughly frightened, were glad to release the two men and to send them out to turn back the mob. This, however, was not till Husband had been terrorized into giving a promise that he would not concern himself any more in the abuses of the officers.[6]

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[1] Colonial Records, VII, 731-732.

[2] Ib., VII, 733-737.

[3] For Husband's own account of his arrest and trial see Wheeler, II, 316 *et seq.*

[4] Colonial Records, VII, 742.

[5] Ib., VII, 743.

[6] Wheeler, II, 317.

They also sent out Secretary Edwards, who read a proclamation to the excited people, and delivered a verbal message from the governor to the intent that if the Regulators would petition the governor for redress and go to their homes he would see that entire justice was done them. This was exactly what they had decided upon as their next step in case the meeting on May 11 should fail, and they consequently gladly accepted the proposition. The officers also accepted the offer, and to the people the case was put as if the governor and council had been called in to arbitrate between the contending parties.[1]

The Regulators called a meeting to prepare the proposed petition. This was not in keeping with the plans of their opponents. Fanning had already written to some of the most pacific of the Regulators, offering, if they would meet him in Hillsboro, to prepare a petition to the next assembly for relief, which petition he agreed to present himself as a member from Orange.[2] By this it seems that he wanted to get a petition worded in a manner inoffensive to his interests, which he could present as the petition of the discontented people of his county. His plan was thwarted now that the petition was to be regularly prepared by the organization. The officers did not give up hope, however; for through Ralph McNair they sent Husband a paper of their own framing, which, it was confidentially said, was the only petition that would "go down with the governor."[3] Husband was asked to induce the people to adopt this as their petition. It was a dastardly attempt at bulldozing. The Regulators were, by this paper, to denounce their past conduct as "illegal and unwarrantable," to declare that they had been mistaken in their charges against the officers, and to throw themselves entirely on the mercy of Tryon. McNair wrote coaxingly enough, but he did not hesitate to employ threats. He warned Husband that if the proposed petition was not adopted Fanning would represent the case to Tryon as treason. At the meeting a clergyman and a merchant[4] appeared, who tried to influence the people to the same end. The very inexperience of the Regulators saved them.

[1] Colonial Records, VII, 765, 766.

[2] Ib., VII, 741.

[3] McNair's letter and the petition referred to can be found in Colonial Records VII, 767–771.

[4] The names of these two men are not given. (See Wheeler, II, 309.)

Confused by the threats of the officers, they appointed a committee, who should lay before the governor and council all the papers of the association, and who should transmit with them a statement of the history of the movement, together with a request for pardon for anything they had done contrary to the King's peace and government.[1]

At the same meeting they procured affidavits to support their charges against the sheriff, clerk, and register in twenty cases of alleged illegal fees. These affidavits were most probably sent to the governor along with their other papers. They undoubtedly make out a very strong case against the officers. Moreover, we have no evidence in rebuttal of them.

The reply[2] of Tryon to the Regulators was cold. He denied that he had authorized Edwards to pledge his interference to them. He frowned at their proceedings, darkly hinted at treason and its punishment, hoped that his proclamation had brought them to submission, indorsed the vigorous action of Fanning and the loyal militia, directed the dissatisfied to desist from all further meetings, and to allow the taxes to be collected. Said that he had authorized Edwards to say no more than this communication implied. He assured them that he should order the attorney-general to prosecute upon due application all who were charged with taking illegal fees, and promised for himself that a proclamation should be issued against the same abuse. For their better information he told them that the poll tax, exclusive of county and parish taxes, was, for the year 1767, 7s.[3] The governor read this reply in the council, where it was ratified. Then, at his suggestion, Fanning was called into the room, and the thanks of the body formally expressed to him and his men "for their prudent and splendid behavior" in the recent troubles.

While affairs were assuming this shape in Orange they had come almost to as bad a condition in Anson. Here the office-holding influence was very strong, and the people complained of the same abuses that were charged against the Orange officers. Abundant evidence will be forthcoming in this paper to show how thoroughly county government in North Carolina was then in the hands of an office-holding oligarchy. In Anson

[1] Colonial Records, VII, 759-766.

[2] Ib., VII, 792-794.

[3] This is what it was announced by the sheriff for 1768, when there had been no change by the assembly since the previous year.

the abuse was marked. Samuel Spencer was at once clerk of the county, assemblyman, and colonel of the county militia. Anthony Hutchins had formerly been sheriff, and as such was behind with his accounts, and was charged with having fraudulently conveyed his land to escape payment. He was now a justice of the county court. Charles Medlock had also been sheriff, and was behind with his accounts. He also was a justice. These three men managed the politics of the county. The sheriff, justices, and other officers were all appointed on their recommendation.[1]

Against these the people in 1768 formed an association, the members of which agreed to unite to prevent the collection of the tax for that year, which they thought unreasonably high, to rescue any fellow-member who should be imprisoned, to retake property distrained on account of nonpayment of taxes, and to aid in repaying any member the cost in a lawsuit incurred by reason of his membership in the association. Leading this movement was Charles Robinson, whom Spencer described as a chronic candidate for the assembly, who had worked up this movement in order to aid his political fortune. Robinson had been in the assembly once and there seems to be no reason why we should not believe him an honest champion of the cause of the people.

In April, 1768, the discontented in Anson gathered at the county court about one hundred strong and interrupted the proceedings. They drove the justices off the bench, held a meeting in the court-house at which Robinson was indorsed for the assembly, swore to an oath of their own making, and then dispersed.[2] Spencer forthwith sent Mr. Hooper, possibly William Hooper, to Tryon with a letter, asking for orders in the emergency. The governor, in reply, gave Colonel Spencer the authority to call out the county militia, in order to apprehend the leaders of the insurgents. He promised that if the people would present their grievances to him or to the assembly they would be redressed, and pointed out that if they would apply to the attorney-general that officer would prosecute all persons charged with extortion. In addition to this letter the council issued a proclamation against the disturbers.[3]

[1] Colonial Records, VII, 806–808.

[2] This is Spencer's account of the affair. (Ib., VII, 722–726.)

[3] Ib., VII, 751.

The Anson Regulators, however, wrote to their brethren in Orange, asking for information as to the methods of organizing. The latter responded with alacrity, sending a copy of their proceedings on May 21, "to prevent speedily their running into any errors," and promising to send other papers.[1] It was, perhaps, due to this advice that three months later the Anson people changed their method from violence to the friendly petition. In August they delivered to the governor a statement of their grievances. They acknowledged that they should have addressed him before their proceedings of the past April, but pleaded that oppression had made them rash. They asked that most of the justices of peace in the county might be removed and others appointed in their stead. To this paper 99 names were signed.[2] Governor Tryon replied in a conciliatory tone, promising that officers charged with extortion should be prosecuted, and intimating that the insurgents had been fortunate in securing lenity by their timely submission.[3] The people had not submitted to any great extent, however, as we shall see them later on aiding their brothers elsewhere. It seems very evident that Tryon was trying to divide the Regulators in Anson from those in Orange, so as to deal more successfully with the latter.

When the Regulators of Orange referred their case to Tryon for arbitration they did so with full confidence in his disinterestedness. The cold reply to that appeal had destroyed much of this confidence. Just about this time a report was circulated that about £30,000 had been collected more than was necessary to sink the outstanding public currency. This was given as merely a suspicion; but in popular disturbances a suspicion is often as potent as a fact. The Regulators had been forbidden to assemble themselves in any more meetings,[4] and consequently there was much private talking of no submissive nature. A proclamation against illegal fees had been set up at Hillsboro, but it had not brought relief. Husband says that it was followed by higher rather than lower fees.[5]

[1] Colonial Records, VII, 759.

[2] Ib., VII, 806–809.

[3] Ib., VII, 809, 810.

[4] Governor Tryon says they did meet in spite of this injunction. (Ib., VII, 819.)

[5] Wheeler: History of North Carolina, II, 311, 312.

In the meantime Tryon went to Hillsboro, arriving there on July 6. He remained until August, hoping that the country would be induced to submit. The people refused as stoutly as ever to pay taxes. On August 1 they met to consider, as Husband says, the answer to Tryon's reply to their petition. At this meeting there appeared the sheriff of the county, bearing a letter and proclamation from the governor, the import of which was that the attorney-general had been instructed to prosecute officers charged with extortion, and that the Regulators should quietly submit to the collection of taxes by the sheriff. Both the sheriff and his deputy deposed that after the public reading of this letter the people refused to pay the taxes and threatened to take the life of the said deponents if they attempted to distrain property.[1] Husband says they merely told the sheriff that they had decided to refer the matter to the assembly and the whole council, and declared that no insult was offered.[2] They also sent a reply to Tryon's answer to their formal petition, in which they claimed that the officers paid no attention to the proclamation against illegal fees,[3] and added: "Seeing that these sons of Zeruiah are like to prove too hard for your excellency, as well as for us, * * * we have come to the resolution to petition the lower house, as the other branch of the legislature, in order to strengthen your excellency's hands."[4]

Immediately after this the Regulators were alarmed by rumors to the effect that runners were out arousing the militia, and that the Indians were about to be called down upon them. A great multitude of the people—over a thousand—collected about 20 miles from Hillsboro on August 11 and selected eight men to interview the governor. To these the governor replied that he had not had an intention of enlisting the Indians or of leading the militia "to break in upon any settlement, as has been falsely represented;" that he was ever ready to do them justice; that Fanning had agreed to submit his case to the next supreme [superior] court, by whose decision he would abide, and finally that the sheriff's accounts with the county had been examined and approved. Tryon

[1] Colonial Records, VII, 798–799.

[2] Wheeler, II, 312.

[3] This proclamation is found in Colonial Records, VII, 795–796.

[4] Wheeler, II, 13, 14; also Colonial Records, VII, 801-803.

also appointed August 17 as a day for a meeting of Regulators, when, as Husband says, the sheriff should settle with them, by which he probably meant that on that day the sheriff would give them an opportunity of examining the public accounts.[1]

The governor seems not to have called together the militia till the town was thought to be in danger. Then he could gather only 400 men, to whom he administered an oath of allegiance to the King and to the North Carolina government before he dismissed them.[2]

On the 17th, the day set for the meeting, the old sheriff did not appear, but John Lea, the new sheriff, appeared with a letter from Tryon, the tone of which was unexpectedly severe. This letter had been indorsed by a council of three members which had been gotten together at Hillsboro. In it the Regulators were told that their measures were criminal and illegal; that they had made every man of property and probity in the county consider them as bent on insurrection rather than as desiring a legal process against those whom they accused. It was the governor's chief concern that they should not trust the courts of law, and in this he felt was implied the insufficiency of his power to see that justice was done them. To relieve him of the necessity of calling out the militia to protect the next term of court, at which Butler and Husband were to be tried, he demanded that by the 25th of August twelve of the prominent Regulators should meet him at Salisbury and become surety in a bond of £1,000 that at the said court no attempt should be made to rescue the two men in question.[3] This letter was delivered on the 17th; on the same day Tryon set out for Salisbury.

Two days later the Regulators replied that for two reasons they could not enter into the proposed bond: (1) The most pacific of their number were their leaders, and these could govern the men and prevent outrages, whereas if they entered into such a bond it would destroy their influence over the more violent; and (2) they had never intended to rescue the prisoners, but to ask the governor to dissolve the assembly, a procedure which they thought would stop every complaint. The

[1] Colonial Records, VII, 819–821; and Wheeler, II, 312–313.
[2] Colonial Records, VII, 804.
[3] Ib., VII, 805, 806.

governor's plans were already made and he was acting with his customary promptness. His design was, if the Regulators should not be submissive, to get as many forces as he could raise in Rowan and Mecklenburg counties and then to march back to Hillsboro just before the term of the superior court, which met in September. He arrived in Salisbury on the evening of the 18th. On the 19th he appointed a review of the Rowan militia for the 26th, gave orders that ample entertainment should be provided on that occasion, and passed rapidly on to Mecklenburg.[1] Passing through the German settlement he stayed on Sunday with Maj. Martin Phifer, a member of the assembly from Mecklenburg. Here he won the people by hearing a sermon by their minister, Mr. Suther, who "recommended with warmth a due obedience to the laws of the country." He cajoled the Presbyterians also, whose ministers, Hugh McAden,[2] James Creswell, Henry Patillo, and David Caldwell, sent the governor a letter full of loyalty to government and maledictions for the Regulators,[3] while at the same time the Presbyterian pastors, presumably the same ministers, wrote a letter to the North Carolina Presbyterians condemning the Regulators in the strongest terms.[4] He also utilized the feeling of respect for their neighborhood leaders, which was still strong with the Scotch, by appointing as captains and justices of the peace the influential men of the different communities. These were able to bring many soldiers to his side.[5] The organization of the Baptists was also against them.[6]

From Major Phifer's he proceeded to review the Mecklenburg militia on the 23d. Here also he had entertainment provided for men and officers. Nine hundred men came to the review, but when he tried to get them to take the oath that he had administered to the loyal in Orange some objection was made, so that, as night was coming on, it was not possible to call for volunteers. He accordingly ordered the captains to

[1] Tryon's journal shows all of his proceedings on this trip. (Colonial Records, VII, 819–838.)

[2] The spelling in the letter is McCaddon, but Foote gives it uniformly McAden. (Sketches, pp. 175–176.)

[3] Colonial Records, VII, 813–814.

[4] Ib., VII, 814–816.

[5] See "Fau for Fanning," Univ. Mag., IX, 465.

[6] Purefoy: History of Sandy Creek Association, pages 69–73.

call for volunteers at private musters and to report the number they could furnish to their colonel by the 27th. On the 26th he was in Salisbury, where the reading of the letter of the Presbyterian pastors and a liberal supply of beer and toddy handed around in the ranks of the volunteers had the desired effect. By this means he was able on the 13th of September to set out for Hillsboro with 195 men from Rowan and 310 from Mecklenburg.[1] He met with no opposition save a harmless threat from the Regulators that they would, on the pretense of the fear of disease, stop a drove of cattle which were being driven to him, and on the 19th he arrived at his destination. Two days later this body was joined by the Orange forces, 699 strong, and by the Granville detachment of 126 men. These, with two small companies of gentlemen, an artillery company, and the general officers, made up a force of 1,461 men, all called out to protect the Hillsboro court from the Regulators.[2]

One peculiarity of this force was the number of officers in it. There were six lieutenant-generals, two major-generals, three adjutant-generals, two majors of brigades, seven colonels, five lieutenant-colonels, four majors, and thirty-one captains. Of the entire force only 1,153, about three-fourths, were privates. Another noteworthy feature was the number of politicians among the officers. Robert Palmer, a member of the council, was present as adjutant-general; John Rutherford, president of the council and receiver-general of quit-rents, was a lieutenant-general; John Sampson, Benjamin Heron, Lewis H. De Rossett, and Edmund Strudwick, all members of the council, were likewise lieutenant-generals;[3] John Ashe, assemblyman from New Hanover, was a major-general, and James Moore, his colleague, commanded the artillery, with the rank of colonel; Edmund Fanning and Thomas Lloyd, representatives of Orange, held military office, the one as colonel of the Orange regiment and the other as a major-general; Robert Harris, representative from Granville, commanded that county's militia, with the rank of colonel; John Frohock, the lieutenant-colonel of Rowan's regiment, was a member of the

[1] Colonial Records, VII, 889.

[2] The return of the troops is given in Colonial Records, VII, 889.

[3] Ib., VII, 833.

assembly, and Alexender Osborn, the colonel, was a justice of the county court;[1] Martin Phifer was an assemblyman from Mecklenburg and was here a major; Thomas Polk held the same civil office from the same county and was here a captain; Abner Nash, a prominent politician of Halifax, was a major of brigade; Samuel Swann, jr., assemblyman from Pasquotank, was a captain of artillery; Alexander Lillington, an old and influential politician, was a colonel; Maurice Moore, an assemblyman and an associate justice of the superior courts, was present as a colonel; Robert Howe, a member of the assembly, was a major of brigade; Moses Alexander, an influential Presbyterian of Mecklenburg, was present as a lieutenant-colonel and as commissary for his regiment; Thomas Hart, the obnoxious ex-sheriff of Orange, filled the office of commissary of the Orange and Granville forces, and Samuel Spencer, who held several offices in Anson, was present as colonel. At a council of war held in Hillsboro, which no military officer lower than a major attended, but to which 6 members of the assembly were invited, there were present in all 34 members. Of these, 18 were members of the lower house and 6 were members of the upper house of the assembly, making a total of 24 out of 34.[2] Thus, to guard the superior court a military force was called out which embraced, either as high officers or as gentlemen volunteers, one-fourth of the members of that body to which the Regulators had decided to appeal.[3] The above contrast indicates how completely the forces of central and local government, both civil and military, were in the hands of a small officeholding class, which was distributed throughout the counties. As we contemplate such a state of affairs we are struck with the fact that nothing short of a popular upheaval could have brought redress to the Regulators.

Before this array of force the simple farmers were not prepared to make a stand. They assembled on September 22, about half a mile from the town, to the number of 3,700, and sent proposals to the governor "desiring to know the terms on

[1] Colonial Records, VII, 856.

[2] These facts have for the most part been obtained by comparing Tryon's journal with the list of assemblymen, to be found in Colonial Records, VII, p. 342.

[3] There were 72 members in the assembly at that time, it seems. (Ib., VII, 342.)

which their submission would be accepted."[1] This proposition was received by a council of war at which the governor, who was sick, could not be present. The council of war proposed to pardon insurgents if they would give bond to pay their taxes and for the future not to obstruct the officers. The governor suggested that the council consider the advisability of sending troops "to compel the Regulators to submit themselves to government," but that body would modify its views only to the extent that the Regulators should be required to take the oaths of loyalty and allegiance which had been administered to the troops. Accordingly the people were told that if they would surrender 5 of their leaders from Orange, 2 from Anson, and 2 from Rowan, lay down their arms before the army, and promise to pay taxes in the future they would be pardoned. Husband and Butler, it was stipulated, were not to be included in the 9 excepted persons. About thirty of the people accepted this offer; the others went to their homes. The next day Tryon sent a body of troops to arrest those who were especially wanted. Some submitted to arrest, others resisted, but all who were taken were soon released because a true bill could not be found against them. The militia remained in the town during the session of the court. On the 28th they began to be discharged, and on the 2d of October the last of the several detachments marched away. On the 3d, Tryon, by proclamation, pardoned all but 13 of the insurgents.[2] The Regulators soon subsided, and on October 29 Tyree Harris wrote to the governor that on visiting them in in their homes but a short time before he had found them disposed to pay the taxes.[3] Thus ended Tryon's first military expedition against the Regulators. It had cost the province £4,844[4] and not a drop of blood, but it quieted for some time the turbulent members of the Regulators and it gave the pro-

[1] Husband says they offered to pay levies, etc., as usual if the governor would let them come into town to testify against the officers, and if he would pardon their past breaches of the peace, the cases of Butler and Husband excepted. The minutes of the council, which we have followed, say nothing of this, although, as they do not contain the written proposal of the Regulators, it is possible that Husband is correct. (See Colonial Records, VII, 840–842, and Wheeler, II, 316.)

[2] Colonial Records, VII, 850.

[3] Ib., VII, 863, 864.

[4] Ib., VII, 887–888.

vincial magnates an easy and safe means of acquiring military titles.[1]

In the meantime the court had taken up the cases against Husband and Butler as well as the cases against the officers. Husband was indicted for a rout in four cases; the grand jury returned three of these "ignoramus;" on the other he was tried and acquitted.[2] Butler was tried on two counts and found guilty on each. He was sentenced to pay a fine of £50 and to be imprisoned six months. Two others, Phillip Hartso and Samuel Devinney, were tried for the same act, convicted, and sentenced to pay a fine of £25 and to be imprisoned three months. Dennice Bradley, who was indicted for burning the jail of Granville, was acquitted, and three true bills that had been made out against the leading Regulators who had been arrested were ordered to be quashed because of irregularities, and the attorney-general was ordered to bring in others. Tryon's policy was now to be as lenient as possible, in order to bring the people back to submission, and it is doubtful if it was intended that these indictments should have been revived at the next court. Indeed, he wrote to Lord Hillsborough, the secretary for the colonies, that he "imagined" that "these will take their trial next March." The three prisoners, as mentioned above, he released[3] and suspended the payments of their fines for six months.[4] On September 9, 1769, Tryon, acting on advice from the King, pardoned, by proclamation, all those who had been found guilty on these charges.[5]

[1] While the troops were in Hillsboro, Rev. Henry Patillo, one of the leading Presbyterian ministers of the early history of that denomination in North Carolina, preached to the troops. Mr. Suther was ordered also to preach to the Germans in the army; whether he complied or not does not appear; he doubtless obeyed. At the same time Rev. Mr. Micklejohn, the parish clergyman, was "desired" to preach before the troops. The first and the last were publicly thanked for their services (Colonial Records, VII, 835, 836, and 886), and the next assembly ordered the sermon of Mr. Micklejohn to be printed at the public expense. (VII, 983.) This sermon was preached from Romans, xiii, 1 and 2, that text which has so often been made to hold up the temple of tyranny, and the preacher said in it that the governor should hang at least twenty of the rebels, and that they could not hope to escape hell. (See Foote, Sketches, p. 67.)

[2] Wheeler, II, 321, 322.

[3] Husband says two of them escaped and a discharge was sent after them. The other, Butler, was discharged also. (Ib., II, 322.)

[4] See Colonial Records, VII, 844–846 and 884, 885.

[5] Ib., VIII, 17 and 67.

The one half of the business of the court, that is to say, to try Regulators, was easily accomplished; the other half, to try the officers, was a harder task. Husband says the troops asked the business of every man who went into the court. If any owned that they came to complain of officers they were bulldozed by the guards, so that many were scared away. Those who persisted in staying were ordered out of town. One of the prisoners, very likely Husband himself, induced several to come back, and these brought charges against Fanning and Francis Nash. The former was register, and on five counts he was found guilty. He pleaded a misconstruction of the law. For each offense he was fined 1 penny. Nash, according to Tryon, was also convicted, but if he was convicted he must have gotten a new trial, for the court records show that he gave his bond to appear at the next court.[1] On being convicted Fanning at once resigned his position as register.

The case against Fanning is worthy of a fuller statement. The fee bill allowed the register 2s. 8d. for registering a conveyance "or any other writing, or giving a copy thereof." A deed was brought to be registered, which, besides being a mere conveyance, had indorsed on it the certificate of the examination of a feme covert, the certificate of the person examining, and the oath of execution. To the people this was one instrument of writing, but to Fanning it was four. Also, it was in evidence that it was the custom for the officers in general to consider it as more than one. Fanning claimed that for registering the paper he was entitled to 6s. and some pence, but charged only 6s. The attorney-general, on being consulted, gave it as his opinion that for recording every deed a register was, within the meaning of the statute, entitled to 8s. 7d. Fanning pleaded, also, that not being certain as to this matter he had, on assuming his office, taken the opinion of the justices of the county court, who had told him that he had a right to 6s. and some pence for every deed. This, it was claimed, removed from the defendant the imputation of a "tortious taking," and so the court held. With such a ruling there was nothing for the jury to do but impose a merely nominal penalty. The matter was referred for an opinion to the attorney-general of England, who gave it as his opinion that the deed in question entitled the register to three fees. He also stated the question of criminal intent so that with the facts in the case as

[1] See Colonial Records, VII, 847 and 884.

claimed Fanning could not legally be held guilty of extortion.[1] The matter was also referred to a Mr. Morgan,[2] of the Inner Temple, whose official capacity, if he had any, is not given. He gave a decided verdict in favor of Fanning, stating that the latter was entitled to four fees, and that he could not be guilty any way; because he took 6s., "not with intent to extort, but through an involuntary mistake." He closed by advising that Fanning move for a new trial.[3] The whole matter was in a sad state, and the best remedy was, as the English attorney-general suggested, to pass an explanatory act to the fee bill.

At the next superior court at Hillsboro, March, 1769, there were no troops in the town and many Regulators came to prosecute the officers. We have no official records of this court, but Husband tells us that the people met with small success. Husband himself was tried and acquitted, while Hunter's case was continued.[4] Fanning was tried on the same old charge. As the offense was committed before the previous trial, he made the same plea he had formerly made and was, no doubt, formally convicted. If we make full allowance for any exaggeration that Husband's bias may have led him into, it will still appear that the condition of affairs in the courts of justice must have been far from good. The judge's charges were partial, and the jury was unreliable.[5]

In Rowan County, in the same year, the Regulators attempted to prosecute the officers for extortion. When the plaintiffs arrived at court they found that the grand jury was composed of their enemies, there being not more than three men on it who were not officers. They applied to William Hooper, recently appointed deputy attorney-general, who drew up a bill against John Frohock for extortion. This was returned ignoramus. Three other indictments were made out, but they met the same fate. The Regulators learned on good authority that the grand jury had been packed, the members sitting not being those who had been at first chosen.[6]

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[1] Colonial Records, VIII, 27–29.

[2] Morgan seems to have been merely a consulting attorney retained in behalf of Fanning.

[3] Colonial Records, VIII., 33–36, 223, and 225, 226.

[4] Ib., VIII, 32.

[5] Wheeler, II, 323.

[6] Colonial Records, VIII, 68–70.

The next step taken by the Regulators was in the line of practical politics. Until recently no suspicion had been cast upon the members of the assembly. The people were accustomed to leaders and willingly trusted their affairs in their hands. With no widely circulating newspapers and no political aptness, they formed themselves into no parties, but usually accepted the candidate put forward by the officeholders, who was generally either a member of or closely associated with the officeholding class. When they first began their agitation the Regulators had been content to aim at the local officers. They were told to apply to the courts, where justice should be done them. They complied, and found that the laws were in favor of the officers. They concluded that the laws should be changed. At the same time, since the issue had been sharply defined, they saw that the assemblymen were ranged on the side of the county officers. They now determined to attack this office, and here they were more successful than they had been in any of their other undertakings.

In the summer of 1769[1] the governor dissolved the assembly and ordered the election of a new one. Immediately there came out in Orange an address, written perhaps by Husband, though not signed, which recounted the wrongs of the people, declared that the remedy lay with the people themselves, and called on all to arouse themselves from their "own blind, stupid conduct."[2] This idea, as we have seen, had taken shape in Anson when the Regulators had nominated Charles Robinson as their candidate for the assembly, making, perhaps, the first political nomination in America.

The Regulator spirit was not confined to Orange, Anson, and Rowan. In other counties it was strong enough. Tryon, in 1768, stated to Lord Hillsborough that a party of 30 men from Edgecombe County had tried to release from Halifax jail an insurgent leader who was confined there, but that they had failed. In August of the same year a party of 80 had tried to break up the court of Johnston County, but they were repulsed also.[3] These were attempts by the rasher element of the people. That they were supported by such small numbers indicates that violence was not countenanced here as much as in

[1] Husband says July 10, 1768, but this is an error. The new election was held on July 18, 1769. (Cf. Colonial Records, VIII, 54.)

[2] Wheeler, II, 325–327.

[3] Colonial Records, VII, 884, 885.

Orange. That there was a strong feeling against the officers throughout the province is attested by the results of the election for assemblymen. Carteret, Beaufort, Anson, Halifax, Bladen, Edgecombe, Tyrrell, Orange, Granville, and Hyde changed their entire delegations.[1] Other counties changed their delegations in part. Out of the 78[2] members of the new house, 43 were new men.[3] That all these new men represented a change in the political sentiments of their electors is not probable. Not in all the counties was the issue made. In Orange, Granville, Anson, and Halifax, where the Regulator sentiment was strong, the change was complete. In Rowan, a strong Regulator county, Griffith Rutherford, considered a moderate friend of the people, was retained, but his yokefellow, Frohoek, was dropped and in his place Christopher Nation, an ardent Regulator, was returned. Perhaps the opinion of Henry Eustace McCulloch was but representative of the ideas of eastern families when he wrote from London soon after the election: "The madness of the people must be great, indeed, to trust such wretches as Hermon Husband and Christopher Nation as their representatives."[4]

The cause of this political change is to be found in the action of the assembly that met in November, 1768. This session left as a memorial of its incompetency several defunct bills. One of these was a bill to allow the recovery of debts of less than £5 in value before one justice merely. This measure had been asked for in a petition from Orange,[5] and it was approved in the address to the Orange voters already mentioned. By order Fanning brought in the bill in the lower house, and it safely passed its several readings, until finally on its third reading in the upper house it was attempted to add a "rider" to the effect that persons indicted for riot might be tried in any one of the superior courts of the province, whereupon the other house objected, and as each party remained steadfast the bill

[1] The list of assemblymen in Colonial Records, VIII, 106, 107, should be exchanged for that on pages 303, 304, as may be readily seen by comparing pages 303, 304 with pages 145–147.

[2] There were 80 members in the new house, but two of these represented Tryon, a county erected after the former assembly met, and they are, of course, not competent in such a comparison as we are now making.

[3] Husband says thirty-odd were left out this time, and he hoped to lose more the next election. (Wheeler, II, 330.)

[4] Colonial Records, VIII, 183.

[5] Ib., VII, 874 and 929, 911–912, 914, and 915.

fell through. Other rejected measures that the Regulators would have welcomed were bills to erect a new county out of Orange and Johnston, and another out of Orange and Rowan; a bill for triennial assemblies, which was rejected in the upper house,[1] and a bill to relieve taxation. The last was introduced by Fanning, passed its first reading, but was killed on its second reading in the lower house.[2] The bills to erect new counties were especially desired by the people, many of them, as they said, having to go as far as 60 miles to attend court as it was. An act, however, to erect Tryon County out of Mecklenburg was safely passed. The assembly was also concerned with providing pay for the forces that had gathered at Hillsboro in the preceding autumn. The province had for some time been trying to get an issue of paper money, but had been prevented by orders from the English Government. It now occurred to them that this was their opportunity. A bill was brought in voting an issue of £30,000 in paper to be used in paying the troops and for other purposes. The cost of the preceding campaign had been only £4,844.[3] The vigorous protest of the governor and the upper house caused the bill to be recast, and it finally passed as an act authorizing the issue of £20,000 to pay the troops collected at Hillsboro, to provide for the public claims, and for the easier collection of taxes.[4] It was thus that the governor was induced to allow the passage of a bill that increased the paper currency of the colony to a large extent. There was one proviso, however, which robbed the victory of half of its fruits; it was provided that this paper should not be a legal tender. In writing to the English authorities Tryon confessed that he had been induced to sign this bill because the militia declared that if their pay was not forthcoming they would not assemble again at the call of the government. For this same reason the British Government approved the bill.[5] It has been claimed that the cost of the campaign of 1768 was a great burden to the province. So

[1] Colonial Records, VII, 911.

[2] Ib., VII, 908, 961, and 962.

[3] Ib., VII, 888.

[4] Ib., VII, 915, 916, and VIII, 5 and 6. This amount was to pay the troops, to pay for running the Cherokee boundary line, to pay the charge for a garrison at Fort Johnston, to pay arrears of salaries, to pay the salaries, etc., of the assemblies of 1767 and 1768, and to provide £1,200 due for bounties on hemp. (Ib., VII, 916.)

[5] Ib., VIII, 266, 267.

far from this being true, it may be asserted with confidence that it was considered by a large class of people as a positive blessing.[1] It afforded a welcome opportunity to increase the volume of currency. This assembly also voted to repay Rev. George Micklejohn, the Orange clergyman, for printing a sermon which he had preached before the troops at Hillsboro, and in which he had declared that the governor ought to have executed at least twenty of the Regulators. Such actions as these were calculated to arouse the opposition of those who were dissatisfied with the officers throughout the colony. This class protested. That protest was measured by the political change in the composition of the assembly.

Pending the meeting of the new assembly there was but little activity on the part of the Regulators. A few of the leaders, however, were not subdued. In the spring of 1769, when John Lea, the sheriff of Orange, went to serve a capias on Ninian Hamilton and others, he was taken by Hamilton, Samuel Devinney, Jesse Pugh, and their friends and severely thrashed.[2] The parties who did the whipping were indicted, and the council instructed the attorney-general to use all legal means to punish them.[3] In Rowan all was not serene. The sheriff appointed in 1769 could get no one to go on his bond, his friends giving the unsettled state of the county as their justification.[4]

The Anson Regulators prepared a petition to the assembly. It contained a remarkably well-prepared statement of their grievances, and to it were more than two hundred and fifty signatures. It recounted seven kinds of political hardships and proposed seventeen points of redress. The former are but the grievances we have seen alleged all along. The noteworthy items of the latter are as follows: At all elections the vote should be given by ballot; taxation should be apportioned on a property basis and not per capita; taxes might be paid in commodities; paper money should be issued and loaned on land; debts above 40s. and under £10 should be sued for without lawyers, and before a county justice and a jury of six; the chief justice should have no fees, but should be given a salary;

[1] Colonial Records, VIII, 9.
[2] Ib., VIII, 32.
[3] Ib., VIII, 37.
[4] Ib., VIII, 64.

the fees of the clerks should be restricted, and the assembly should inform the King that the governor and council granted land without regard to the legal "head rights,"[1] by which means it had come about that all the best land was in the hands of a few people, and poor men were obliged to cultivate poor land. By this means, it was alleged, members of the council and their friends had gotten large tracts. They asked for reforms in regard to quitrents, the issuing of land warrants, and the valuing of the improvements on land. They also asked that all denominations have liberty to conduct the marriage ceremony according to their respective rites; and, finally, that Dr. Benjamin Franklin, or some other known patriot, be appointed agent of the colony in London.[2]

This petition, it may be said, is the nearest approach of the Regulation to the Revolution. Several of its proposed reforms hinted at a decided change in government, and its hitting on Franklin for an agent looked toward bringing it into close relation with the larger movement, which it is well known that Franklin was then leading. The mention of this patriot's name was perhaps due to Husband, who, though not a Regulator, was doing all he could to spread among the people a greater love of liberty, and who was in frequent communication with Franklin. It is a tribute to the wisdom of the Anson Regulators that many of these reforms were afterwards, when North Carolina had become a State, put into laws.

Orange and Rowan united in another petition. It asked that lawyers and clerks of the court should not be allowed to become members of the assembly;[3] that clerks and other officers should be paid a salary; that lawyers should be made to take only their legal fees, which were to be reduced to one-half in compromised cases; that all clerks should be removed and "gentlemen of probity and integrity" put into their places; that ministers of all denominations might perform the marriage ceremony; that taxes be based on property; that small debts be recovered before one magistrate and a jury of six, from

[1] Fifty acres for each person brought into the colony was the legal amount that could be granted. By law, unless in special cases, only 640 acres could be granted to one party. (See the author's Constitutional Beginnings of North Carolina; Johns Hopkins University Studies, 12th series, p. 110, note 1.)

[2] For the petition see Colonial Records, VIII, 75-80.

[3] Sheriffs were already forbidden to be assemblymen.

whom there should be no appeal; that inspectors' certificates for the storage of imperishable commodities be made legal tender; that the county be divided; that the public accounts be investigated; and, lastly, that the "yeas" and "nays" in the assembly should be recorded.[1] Besides this petition the Rowan Regulators sent Husband a statement of their wrongs, and begged him, as a representative, to do what he could to obtain relief for them.

A very significant petition on the other side came from the Presbyterians of Mecklenburg. They declare themselves a thousand freemen, "who hold to the Established Church of Scotland, able to bear arms;" that they are faithful and loyal subjects; that they "uphold the courts of justice that the law may have its free course and operation;" and, they add, "We appeal to his excellency the governor how ready and cheerful we were to support government in time of insurrection." They then go on to demand for the counties of Mecklenburg, Rowan, and Tryon the repeal of the vestry and marriage acts, so that in this region the Scottish church may be on the same footing with "our sister church of England."[2]

Two other petitions are worthy of note. One came to Tryon from the Presbyterians of the new county of Tryon, and asked that the ministers of that faith be allowed to perform the marriage rites.[3] The other came from twenty-five "friends of government," as Tryon had called them on a former occasion, and asked that an inspector of hemp and tobacco be appointed for Hillsboro. It was signed by such antiregulating spirits as Francis Nash, Rev. Henry Patillo, Ralph McNair, and Capt. James Thackston.[4]

The assembly met on the 23d of October.[5] In his message the governor informed them that a petition of the former assembly to the King, asking for an issue of paper money, had

[1] Colonial Records, VIII, 81–84.

[2] Ib., X, 1015–1017.

[3] Ib., VIII, 80*b*.

[4] Ib., VIII, 80*a*.

[5] Fanning was recognized as a member of this assembly, but by what right it is difficult to imagine. (Colonial Records, VIII, 107.) He had been defeated in the preceding election, and although Tryon created the borough of Hillsboro that he might be returned from it, this was not done until 1770. (Ib., VIII, 215–217.) His connection with this assembly was short, however, for he soon set out on a visit to New York.

been unsuccessful, and urged them to regulate in a business-like manner the method of keeping the public accounts.[1] The upper house kissed the governor's hand with accustomed facility, but the reply of the lower house was curt and a little surly.[2] Bills to regulate attorneys' fees and to provide an easy means of recovering small debts were introduced at once, but their course was cut off by an event unrelated to them. On November 2 the lower house passed unanimously some spirited resolutions on the questions then at issue between the Colonies and the Royal Government.[3] On November 6 Tryon, who had been ill, called the assembly to him, expressed his disapproval of the resolutions, and dissolved the body. Only five bills were passed, and these were of no constitutional significance.[4] Just before it adjourned the lower house passed a resolution declaring that any person who opposed the due collection of taxes should be rigorously prosecuted as an enemy of the country; and at the same time it declared in another resolution that any officer who should take more than the lawful fee should have the censure of the house.[5] Four days later the council decided to issue writs for a new election in the following March.[6]

The result of the elections of 1770 shows a slight reaction in favor of the friends of government, although it seems that the majority of the assembly were of Regulating spirit.[7] Husband and Pryor were reelected from Orange, and to repair the loss of Fanning, the governor erected Hillsboro into a borough, from which Fanning was promptly returned.[8]

As soon as the assembly met it took up the work of reform. Some progress was in a fair way of being made when the whole legislative body was thrown into terror by news from Hillsboro. The Regulators in that section had become well-nigh

[1] Colonial Records, VIII, 86–89.

[2] Ib., VIII, 91, 92 and 113–115.

[3] For these resolves see Colonial Records, VIII, 122.

[4] Ib., VIII, 139–141 and 170, 171.

[5] Ib., VIII, 139.

[6] Ib., VIII, 150, 151.

[7] Ib., VIII, 270.

[8] Ib., VIII, 215. The Regulators claimed that it was due to Thomas Hart that Fanning was elected. Hart was rewarded by having a bill passed giving him £1,000 for losses, which, it was said, Hart never sustained (Caruthers's Life of Caldwell, p. 117; see also Colonial Records, VIII, 230).

desperate. They had tried petitions to the governor and the assembly, and they had tried the courts. From neither had they gotten relief. During the summer of 1770 they prepared a petition to the officers of the superior court in which they again recounted their wrongs.[1] They prayed for unprejudiced juries, for fair trials of the extortionate officers, and for a proper settlement of the public accounts by the sheriffs. The frame of mind to which they had come is best shown by the following sentence:

> Our only crime with which they can charge us is vertue in the very highest degree, namely, to risque our all to save our country from rapine and slavery in our detecting of practices which the law itself allows to be worse than open robbery. * * * As we are serious and in good earnest, and the cause respects the whole body of the people, it would be a loss of time to enter into argument on particular points, for though there is a few men who have the gift or art of reasoning, yet every man has a feeling and knows when he has justice done him as well as the most learned.[2]

This had an ominous sound.

The superior court at Hillsboro met on September 22, which was Saturday. On that day James Hunter presented the above-mentioned petition to Richard Henderson, the only justice who was on the bench at that term. The matter was deferred till the following Monday. On Monday the court had hardly met when about 150 Regulators, among whom were Hunter, Howell, Husband, Butler, Hamilton, and Devinney, crowded into the room. Jeremiah Fields, one of their number, rose and asked the court for leave to speak. Permission was given, and Fields began by saying that the Regulators had understood that the judge had decided not to try their causes at that term; that they were determined to have them tried, and that if the court would take them up it might prevent mischief. They insisted, also, that the jury that had been selected by the county court should be changed. After about half an hour of this talk, during which the judge tried to pacify them, they retired from the room for consultation. They nearly all carried switches or sticks, and while they stood around the court-house an unfortunate lawyer, John Williams,[3]

[1] Colonial Records, VIII, 231–234.

[2] Ib., VIII, p. 234.

[3] Williams, judging by entries on the docket, received a good share of the business at this court. He was probably the same lawyer with whom we afterwards find Nash transacting business (ib., IX, 363), when he appears as Col. John Williams. If so, he made his home in Surrey, and later moved

started to enter the building. This was too much for the angered crowd. They fell upon him and administered a severe thrashing until he took refuge in a neighboring house. Peaceful methods were now cast aside. The crowd rushed into the court-house for Fanning, who, in terror, sought for protection on the bench. This did not help him. They seized him, dragged him into the street, and beat him until he, as Richard Henderson said, "by a manly exertion miraculously broke holt and fortunately jumped into a door that saved him from immediate dissolution." From this retreat he was brought out, but was allowed to go to his home on his promise to surrender himself the following morning. Thomas Hart, Michael Holt, Alexander Martin, "and many others" were also whipped. Several who were wanted saved themselves by flying.

The next morning Fanning gave himself up. The Regulators, after some deliberation, announced to him that they would release him on condition that he would agree to take the road and keep running till he was out of sight, conditions with which he most likely complied in a satisfactory manner. They then repaired to his new and pretentious dwelling, which was especially detestable to them as being built out of what they held to be illegal fees. They surrounded it, burned the papers, broke the furniture found in it, and finally demolished the structure. It was charged that they took a sum of money from it, but this they emphatically and indignantly denied.[1]

No indignity had been offered to the judge, except some threats by the more unruly of the crowd. In the beginning James Hunter had assured him he should be protected. In the afternoon of Monday he was allowed to adjourn court until next day, and was then escorted, with some parade, to his lodging. The Regulators demanded that he should proceed

to Tennessee. (Ib., IX, 370, and Wheeler, II, 409.) His going to Tennessee was due to his appointment as agent for the company which in 1774–75 was attempting to organize the Transylvania tract. (Colonial Records, X, 256, 382.)

[1] Colonial Records, VIII, 260. In 1773 Fanning was suing to recover damages for this loss. He was induced by Governor Martin to withdraw his suits and trust to an appeal to the assembly. Martin made the appeal. The lower house replied that to pay the claim would create discontent in the back counties, and refused to vote indemnity. The governor protested, pleading his promise to Fanning, but the assembly remained unmoved. (Colonial Records, IX, 548, 551–552, 560–562.)

with their cases, without allowing any lawyers but the attorney-general in the court room, and that the jury should be changed. The judge promised this with alacrity, but about 10 o'clock at night he mounted a fast horse and quietly stole away, leaving the court adjourned in course.[1] After venting their fury on Fanning's property, the crowd, seeing that the judge was gone, went to the court room, secured the docket, and called over the cases, entering their own judgment or comments on each case. There on the pages one finds to this day the memorials of their futile protest against what they knew was wrong, but knew not how to remedy. One reads such expressions as the following: "Damned rogue;" "Fanning must pay;" "Hogan pays and be damned;" "Fanning pays, but loses nothing;" "Judgment by default, the money must come of the officers."[2]

Whatever we may think of the justness of the cause of the Regulators, we must readily agree that their conduct on this occasion was illegal. As it turned out, they could do nothing but obstruct the court. The fault lay in the system of government in force in the colony. With such a strongly centralized government, there was no avenue by which the people had access to reform. The ideas of government held by the royal agents and their numberless hangers-on who swooped down on the defenseless colonists made it impossible that these agents should ever understand even the point of view of the protesting people. Their action here can but seem like a mad rush against fate. The people seem so to have regarded it. In 1768 from three to four thousand had come down to rescue the two prisoners, but now not so many hundred took part in the proceedings.

News of this trouble sent a chill of fear throughout the province. The officers in Orange asked that the assembly be convened at once,[3] and the attorney-general advised the same thing,[4] but inasmuch as that body was already to meet on November 30, and as Fanning reported the country quiet, the council decided that there was no need for an extra session.

[1] We have here followed chiefly the narrative of Richard Henderson, which bears evidence of being impartial in its essential points. (Colonial Records, VIII, 241-244.)

[2] Ib., VIII, 236-240.

[3] Ib., VIII 246, 247.

[4] Ib., VIII, 252.

The governor asked the attorney-general to say whether or not the action of the Hillsboro mob could be dealt with as treason. The reply was in the negative. All that could be made of the case was a riot and, because it was an insult to the court, a misdemeanor. It was pointed out that, under existing law it was necessary to try the offenders in the superior court district in which they resided, where, it was evident, no process could be served on account of the feeling of the country. It was suggested that in each county the militia be mustered in order to learn who would serve against the insurgents.[1] This suggestion was adopted by the council.[2] Also the justices of the peace throughout the province were commanded by proclamation to take and transmit to the governor all depositions that might be had in connection with the above disorders.

To add to the alarm felt by the government at Newbern there came the tidings of another outrage. In Granville, on the night of the 12th of November, Richard Henderson's barn and stables were burned, and two nights later his dwelling was also destroyed. It was believed by the government party that the Regulators had fired these buildings. Straight upon the heels of this report came the rumor that the insurgents were preparing to come down to Newbern at the coming session of the assembly in order to overawe it. The panic-stricken council offered a reward for the discovery of the incendiaries and called on the counties intervening between Hillsboro and Newbern to hold their militia in readiness to intercept the threatened march.[3] Eleven days after this happened the assembly was called to convene, but it was only on December 5 that a quorum was present. On the day before this a report came from Pitt County that the Regulators of Bute and Johnston were marching on Newbern to prevent Fanning from taking his seat for the pocket borough of Hillsboro. The council, trembling with terror, called out the Craven regiment to guard the town.[4]

While these reports were flying the assembly met.[5] Born as

[1] Colonial Records, VIII, 251, 252.

[2] Ib., VIII, 253.

[3] Ib., VIII, 258–260.

[4] Ib., VIII, 262. Newbern was in Craven County.

[5] Caruthers prints a story, which is possibly true, though the records do not mention it. It was to the effect that when Husband went to the assembly he carried with him the amount which the Regulators claimed was their just taxes. When his name was called the governor asked why

it was in terror, it is not surprising that it should have passed away in blood. Its first object of vengeance was Husband, who was one of the members from Orange. He was pounced on for a circular letter addressed to Maurice Moore, one of the associate justices of the superior courts and a member of the assembly. This letter was signed "James Hunter," but Husband was declared to have written it. It was branded as "a false and seditious libel," and Husband was charged with publishing it. Other charges against him were falsehood before the committee on propositions and grievances, and a threat that if imprisoned he would bring down his friends to release him. The result was that Husband was expelled the house.[1] The council thereupon sent for the minutes of the assembly, and, satisfying themselves as to the expulsion of Husband, unanimously resolved that it would be disastrous for him to rejoin the Regulators. They requested the chief justice to have him arrested, which was accordingly done.[2]

This was not what had been expected. Iredell says that on December 15 the "majority of the house were of Regulating principles."[3] Then why were they so easily influenced? This change was wrought by two agencies: (1) Fear, incident to the alarming reports that, whether true or false, were brought to Newbern; and (2) an agreement with the Presbyterians by which a college was to be chartered in Mecklenburg County, and by which Presbyterian ministers might perform the marriage ceremony,[4] in exchange for the support of that denomination in measures against the Regulators.[5] The majority did not go over entirely to the other side. They still held to their position of regulating the abuses of government, but they joined the

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the King's subjects in Orange had not paid their taxes. Husband replied that the people owed his excellency, as they believed, so much butter, but, as that was apt to stick to the fingers to prevent waste they had sent it by their representative, who was ready to pay it to the treasurer if he could get the proper receipt. He then walked to the speaker's table and, placing a bag of coin on it, said: "Here are the taxes which are refused to your sheriff." (Cf. Life of Caldwell, pp. 134, 135.)

[1] Colonial Records, VIII, 268, 269, and 330, 331.

[2] Ib., VIII, 269, 270.

[3] Ib., VIII, 270.

[4] Ib., VIII, 486 and 526.

[5] This is generally charged by all the writers on the subject, and the facts of the case make the charge a probable one. (See Colonial Records, VIII, 527.)

governor's side in passing a bill against the illegal acts of the Regulators. On this point their position was enunciated in their reply to the governor's message. They said: "The late daring and insolent attack made on the superior court at Hillsboro by the people who call themselves Regulators we hold in the utmost detestation and abhorrence."[1]

On December 15 Samuel Johnston, of Chowan, one of the oldest counties, brought in a bill for suppressing riots. It was an emergency law and was to expire in one year. It gave the attorney-general authority to try charges of riot in any superior court as he saw fit, declared outlaws those who avoided for sixty days the summonses of this court,[2] and authorized the governor to call out the militia to enforce the law.[3] As soon as this bill was read it was tabled, and the house immediately appointed a committee to prepare a bill regulating officers' fees.[4] All efforts were then bent to passing reformatory laws, until, on December 31, the Regulators themselves precipitated action. On that day it was reported that a large body of Regulators were assembled with wagons and provisions at Cross Creek preparatory to marching on Newbern. The governor asked for an appropriation to meet the attack and received £500 to protect the town.[5] Two days later the lower house took from the table Johnston's riot bill and pushed it so rapidly that just a week later it was passed for the third time by the upper house and ordered to be engrossed.[6] At the same time the committee on propositions and grievances reported at length on the state of the country. They condemned extortionate fees, denounced as "a real grievance" the opposition of the Regulators to the sheriffs and the courts, and recommended that the leaders of the insurgents be brought to sum-

[1] Colonial Records, VIII, 312.

[2] Such an outlaw might be killed with impunity. It was this feature, and not, as Saunders seemed to have thought, the entire law, that the English Government objected to. They declared that it was not fit for the British Kingdom, and, although they thought some severe law might be justified in the condition of affairs in North Carolina, they still advised the assembly, if it intended to reenact the law, to leave out this clause. (Colonial Records, IX, 238, 248, 285, 289, and 366.) The law expired in a year and was not renewed.

[3] The text of the act is given in Colonial Records, VIII, 481–486.

[4] Ib., VIII, 319, 320 and 270.

[5] Ib., VIII, 345–346.

[6] Ib., VIII, 356, 388 and 390.

mary punishment.[1] The legislature then went on to pass a bill to amend the act for appointing sheriffs and to direct their duty in office; a bill to ascertain attorneys' fees; an act more strictly to regulate officers' fees; an act for the more speedy collection of debts under £5; an act to grant the chief justice a salary, and acts to erect the counties of Wake, Guilford, Chatham, and Surry, all lying in the region infected with the Regulator spirit. All these laws contained reforms sought by the Regulators.[2]

Tryon did not wait to see what effect these laws would have. The first law he signed was the riot law. He at once ordered the arrest of the leaders of the mob concerned in the Hillsboro riots. Had he waited for a time the new laws might have worked the reform that was necessary to quiet the discontented. Four days after the act was ratified he informed the council that the Regulators were still assembling in Orange, and asked for counsel. He was advised to call a special term of the court of oyer and terminer at Newbern under the recent act. This court met on February 2, 1771. It first took up the case of Husband, who had lain in the jail at Newbern since his arrest on December 20, 1770, no one, as Tryon said, offering to go on his bond.[3] The case went to the grand jury, who found "no bill," and the prisoner was released.[4]

Tryon's procedure in this matter has been pronounced ex post facto. There is in his favor this modifying circumstance: The act in question was not a new law in the strict sense; it was merely an attempt to make more effective the English riot law, which held in all the British colonies. No new offense was created by it, but only the method of procedure was changed. The fact that the whole provincial judiciary supported the governor in his position indicates that it was generally considered a good law at that time. The point at which the governor is most at a disadvantage is that he should have kept Husband in prison for so long a time on a charge which the grand jury at once pronounced insufficient.[5] The people of

[1] Colonial Records, VIII, 388, 389.

[2] For list of bills passed see Colonial Records, VIII, 428, 429, and 477, 478.

[3] Ib., VIII, 494.

[4] Ib., VIII, 511, 546.

[5] The records show plainly that Husband was imprisoned really to keep him away from the Regulators. The charge of libel was merely a subterfuge. (Ib., VIII, 269.)

Orange were convinced of the injustice of the imprisonment, and when the prisoner was released they had already assembled to march to Newbern in order to liberate him. When they received the news that he was at large they quietly dispersed.[1] This had caused a paroxysm of terror, and the government had hastily called out the regiments of Dobbs, Johnston, and Wake counties.

Tryon, as he says, was not satisfied with the temper of the grand jury just mentioned and was "unpleased with the discharge of Husband." He dismissed that term of the court and called another for March 11. The sheriffs of the several counties in the district were directed to select as jurymen only "gentlemen of the first rank, property, and probity in their respective counties."[2] This the governor admits with the frankness that indicates that he considered his attempt to influence the course of justice as within his prerogative. By strenuous efforts witnesses were also brought down from Orange. As a result everyone of the sixty-two indictments that were presented was returned "a true bill."[3] The witnesses that went before the grand jury in these cases were all on one side, most of them being officers. The riot law declared that these defendants would be considered outlaws if they did not appear for trial within sixty days. Accordingly another court was called for two months later, and to it these bills were made returnable.

This grand jury was composed, as Tryon wrote, "of the most respectable persons," that is to say, of the colonial aristocracy. They met the governor by appointment in the palace and "unanimously and thankfully accepted" his offer to go at the head of an armed force to suppress the insurgents. At the same time they signed the "association"[4] themselves. The gentlemen on the Cape Fear River entered into "an association of similar purpose and intent."[5]

In the meantime energetic preparations were made for a

[1] Colonial Records, VIII, 500.

[2] The juries of the superior court were chosen from names sent in by the sheriffs of the counties in the superior court district.

[3] For lists of indictments and of witnesses see Colonial Records, VIII, 530–532.

[4] The association was an agreement of loyalists, bound by oaths, that they would support the King's Government in the colony. (Cf. Colonial Records, VIII, 549.)

[5] Ib., VIII, 546–548.

military expedition to Orange. Two columns were to move at once on Hillsboro. One of these was to be composed of the men of the Cape Fear section under the command of Gen. Hugh Waddell. It was to march first to Salisbury and thence to Hillsboro, where it was to be joined to the second column, which was to be commanded by the governor in person, and was to march directly from Newbern to that place. Tryon was distinctively a military man and no doubt delighted in the work now before him. He was the more anxious to make the expedition a success inasmuch as it was likely to be his last official action in the province. In February he had been appointed governor of New York, with instructions to proceed at once to his new post of duty.[1]

Love of campaigning was not Tryon's only reason for this expedition. During March a letter from Rednap Howell to James Hunter, both leading Regulators, had been intercepted. In this it was stated that it would have been no trouble to raise the country in the region of Halifax for the release of Husband; that the Regulation was about to be established there, and that if once there it would soon run into Edgecombe, Bute, and Northampton counties. Howell also wrote that he was told that the militia of Craven and Dobbs would not fight against the Regulators.[2] He had heard that the clerks' places in the new counties "are parceled out among the quality; * * * but if you suffer any rascal to come there may eternal oppression be your lot." He closed by saying: "However, if this be true, the day is ours in spite of Lucifer. I give out here that the Regulators are determined to whip everyone that goes to law, or will not pay his just debts,[3] or will not agree to leave his cause to men where disputes [sic]; that they will choose representatives, but not send them to be put in jail; in short, to stand in defiance, and as to thieves, to drive them out of the country." However friendly one may be to the Regulators, he must see in this a movement which the British Government of the time could not allow to proceed. At the same time the chief justice and his associates in reply to an inquiry reported: "We submit it to your excellency as our opinion

[1] Colonial Records, VIII, 498.

[2] He was misled in this respect, as these counties furnished considerable detachments in the campaign that was then beginning.

[3] An illustration of the Regulators' method of doing justice may be had by consulting the Colonial Records, X, 1018, 1019.

that we can not attend" the March term of the Hillsboro court "with any hopes of transacting the business of it, or, indeed, with any prospects of personal safety to ourselves." These two letters were read to the council, and it was resolved that the governor should immediately raise a body of militia and march against the insurgents.[1]

As indicated by Howell's letter, the spirit of the Regulators was more defiant than ever. Their meetings were kept up with much restlessness. On March 6 Waighstill Avery, a lawyer of note, came upon one of these assemblages, containing more than 200 men. in Rowan. These people, disappointed in the revenge they had expected in releasing Husband, had now turned their steps toward Salisbury court.[2] Avery was arrested and held some hours in their camp. He heard their dire threats against the officers. They swore that since the riot law was passed they would kill every clerk and lawyer. They declared that the governor was a friend of the lawyers, that the assembly had worsted the Regulation and that they would pay no fees. They seemed especially angry at Maurice Moore and Richard Henderson, and declared that after the 22d of March Fanning should be considered an outlaw, whom any Regulator might kill on sight. To all these statements Avery made affidavit.[3]

Rowan court was then in session and it was so alarmed that it adjourned and the loyal militia of the county was called out. Three companies responded, and these were afterwards joined by 70 or 80 men from Mecklenburg. This was a small defense against the force the Regulators could bring, and the neutrals cried out for relief from this constant recurrence of terrorism. The officers decided to capitulate. It was agreed to leave the matter at issue to arbitrators, and that if these should decide that illegal fees had been taken the officers should refund the excess. The Regulators chose as referees Hermon Husband, James Graham, James Hunter, and Thomas Person. The other side chose Matthew Locke, John Kerr, Samuel Young, and James Smith. Alexander Martin and John Frohock reported the matter to Tryon. Their eagerness to put the matter before him in a favorable light is apparent.

[1] Colonial Records, VIII, 536–539.

[2] Ib., VIII, 534.

[3] For Avery's affidavit see Colonial Records, VIII, 518–520.

They said they felt confident of his approval.[1] If they meant this they were rudely disappointed. Tryon wrote with fine sarcasm that of course if they had abused their trust they ought to make restitution. To that he was entirely willing, but he did not approve of their action in entering into negotiations with insurgents and binding officers who were responsible to government alone. He added that he was about to march with an army into the country of the Regulators, and he thought this would be a more effective means of settlement than the Rowan agreement.[2] The arbitrators were to have met on May 21, but the battle of Alamance coming on the 16th, the result was in favor of Tryon's method.[3]

The Regulators for their part protested to the governor against raising an army to produce commotions. They said they had resolved that if he did come every man would take his horse from his plow and meet the governor "to know for certain whether you are really determined to suppress all the disturbers of the public peace and to punish according to their deserts the original offenders in government." If so, they would help him, but if he designed to support "that tyranny which has so long been premeditated by some officers of the province we will contend for our just rights and humbly entreat you, sir, to return with your men where there may be more need of them—our civil liberties are certainly more dear to us than the good opinion of a ruler, though both are desirable." They accused the assembly of violating the British constitution in that they "paid very little regard to that bulwark of life, the habeas corpus, when they enacted for a law the court of oyer, to be held at Newberne for the trial of riots, where the accused persons must attend, though living in the most remote parts of the province."[4]

Tryon paid no attention to this protest, but continued to levy troops. On March 19 he called on the colonels of the counties to secure volunteers. He gave orders to raise 2,550 men.[5]

[1] Colonial Records, VIII, 533–536.

[2] Ib., VIII, 545.

[3] It was told to Caruthers that such a meeting did actually take place in West Guilford and that restitution was made there. Another meeting was arranged for East Guilford, but failed to occur for the same reason that the Rowan meeting failed. (Cf. Life of Caldwell, p. 143.)

[4] Colonial Records, VIII, 543, 544.

[5] Ib., VIII, 697.

To get these was not an easy thing. In Bute not a man could be enlisted.[1] According to Howell other counties were reluctant. A bounty of 40s. was offered to each volunteer, and this had its effect. The 20th of April was fixed as the day on which the eastern column should leave Newbern.[2] Three days later than that the march began. When the body had reached Johnston Court House there were present detachments from Craven, Carteret, Orange, Beaufort, New Hanover, Onslow, Dobbs, and Johnston,[3] besides an artillery company. At this place the Wake militia presented themselves, but with no arms. This seems to have been a ruse to keep from serving. A smaller detachment, however, joined the army next day and was detailed to assist the sheriff in collecting taxes in Wake.[4] The majority of this force came from Orange and Dobbs, each having four companies. Craven came next with three. In all there were 917 rank and file and 151 officers[5] The western column, which at that time was going its allotted course under General Waddell, contained 236 rank and file and 48 officers, besides an artillery company. They came from Anson. Rowan, Mecklenburg, and Tryon counties.[6]

On May 9 the governor reached Hillsboro without any inconvenience. On the same day General Waddell, who had just left Salisbury, crossed the Yadkin, where he was met and stopped by a large body of Regulators.[7] A council of officers decided that in view of the numerical superiority of the enemy, and because their own men could not be relied on to fire on

[1] Colonial Records, VIII, 552. The colonel was removed from command of this militia because he did not raise volunteers. (Ib., 671, 672.)

[2] Ib., VIII, 540, 541.

[3] Ib., VIII, 574.

[4] Ib., VIII, 577.

[5] After the battle of Alamance the detachment from Wake and a company of light infantry rejoined with 100 rank and file and 16 officers. (Colonial Records, VIII, 677.) The order of battle seems to contradict this. (Ib., 583–584.)

[6] Ib., VIII, 607.

[7] Caruthers says that the Regulators surrounded Waddell and took many of his men and that he finally escaped across the Yadkin to Salisbury with but few followers. (Life of Caldwell, p. 145.) Neither Waddell's own journal nor Tryon's reports of the campaign mention anything which could be construed into such an occurrence. Caruthers's information was verbal and was secured seventy years after the events described. He was doubtless misinformed.

them, it would be prudent to fall back to Salisbury. This they did.[1] This column had been seriously hampered by the loss of its ammunition. Nine young men, later known as "The Black Boys of Cabarrus," disguised themselves and fell upon a convoy that was taking some powder from South Carolina to General Waddell, beat off the guards, and burnt the powder.[2]

On May 11 Tryon moved from Hillsboro in order to relieve his beleaguered lieutenant. His route took him through the heart of the country of the Regulators. He halted on Sunday at Colonel Mebane's for divine service and then marched to Haw River, where he was joined by 23 mounted men under Captain Bullock. This constituted his sole cavalry.[3] For the sake of justice or of discipline, or for policy, he issued strict orders against the taking of property by the soldiers, an abuse that was getting frequent now they were among their foes. On the 14th he reached the banks of the Alamance. Here he rested a day, and on the 16th formed his army in line of battle and marched to find the enemy, who were assembled about 5 miles farther on. He had formed his army into two lines about 200 yards apart. In the first were the companies from Carteret, Orange, Beaufort, and New Hanover, and three companies from Dobbs, as well as the artillery. In the second were the companies from Onslow and Johnston and the remaining company from Dobbs.[4] Two companies from Orange and a number of sick had been left at Hillsboro, and a small company had been left to guard the camp on the Alamance. It is likely, therefore, that the army contained on that morning some less than 1,000 men and officers.

The Regulators in the meantime had assembled to the number of 2,000. It is difficult to say how many of these had arms. Caruthers thinks that not over 1,000 had them. They had neither definite aims nor efficient organization. Their leaders seem to have thought that by making a show of force they would frighten the governor into granting their demands. They had much trouble in holding the people under restraint. There was a considerable element in their camp that could

[1] Colonial Records, VIII, 608 and 610.

[2] Ib., VIII, 622; Wheeler, II, 65.

[3] Ib., VIII, 581.

[4] In this arrangement the company from Pitt was mentioned. This must have been an error, as the return shows no such company in the expedition. (See Colonial Records, VIII, 583, 584, and 677.

not be kept quiet. These, against the wishes of the leaders, caught Col. John Ashe and Captain Walker on the morning of the 15th, while they were out scouting, and whipped them severely. This action, says Caruthers, "was strongly censured by the great body of the Regulators, and some of them were so much disgusted that they threatened to give up the cause entirely if such acts were repeated."[1] The two men were, however, held prisoners.

On the same day Dr. Caldwell, who had come along in the interest of peace, went to Tryon in reference to an agreement on the points at issue. A petition was also sent. Possibly Dr. Caldwell carried it.[2] He was promised a reply the next morning. On the 16th, as the army was put into motion to move up to the Regulators, the reply was sent. It offered no concession, but required that the people should submit to government and disperse, and gave them an hour in which to comply with the conditions.[3] The ill-fated people seem not to have realized their position. They remained waiting while Dr. Caldwell again sought the governor. They had not the least idea of what a battle was, and when their envoy returned to report his failure and to advise them to go to their homes they stood stolidly in their places. Husband, who, true to his attitude as peacemaker, had come along hoping to help make a compromise, now saw that there was no hope and quietly rode away.[4] Dr. Caldwell sadly did the same. So unconscious were the men of their danger that they were engaged in wrestling matches, when an old soldier who happened to be among them advised them to look out for a volley. It was but a few minutes before the firing began. Just how the first shot was fired is matter of dispute. All agree that it came from the governor's side.[5]

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[1] Life of Caldwell, p. 147.

[2] Colonial Records, VIII, 640, 641.

[3] Ib, VIII, 642.

[4] Knowing his danger, Husband fled to his old home in Maryland. Not stopping long there, he went on to Western Pennsylvania, where he made his future home. He was concerned in the whisky rebellion and was taken and condemned to death for his part in it. Through the interposition of friends he was pardoned, and died a few day afterwards at a tavern in Philadelphia. (Caruthers's Life of Caldwell, pp. 167, 168.)

[5] The story of the battle as told by Tryon's friends may be found in Colonial Records, X, 1019–1022. This account seems to have been in line with that of the early historians of the State.

The Regulators had no officer higher than captain, and each company now took command of itself. At first there was much confusion on their side, the artillery fire being very effective. Some hardy men, however, crouched behind rocks and trees and managed to drive away the gunners and to take the guns. They were not supported by their own party, and when the troops rallied against them they abandoned the pieces, which they had not been able to work. Long before this the remaining Regulators had taken to flight, and now the field was clear.[1] The action had lasted two hours, and the loyalists had lost 9 killed and 61 wounded,[2] while the loss of the Regulators was 9 killed and a great number wounded.[3] About 15 were taken prisoners. One of these, James Few,[4] was executed on the spot. He was a visionary man, who had been active in the Regulation. His execution was ordered with the idea of striking terror to the country. It was needlessly summary, as the movement was already crushed.

On the 21st the troops marched to Sandy Creek, where the governor remained a week collecting supplies from the people and imposing an oath of allegiance on them. On the day after the battle he pardoned by proclamation all those who should submit themselves to government and take the oath of allegiance, except those who were already captured and those who had recently been outlawed.[5] This proclamation was for four days, but it was extended at various times until all the country had an opportunity to take it.[6] The British Government gave its heartiest approval to the course that Tryon had pursued,

[1] We have followed for the chief events of the battle Caruthers's Life of Caldwell, pp. 145–158.

[2] The Regulators put this number higher, but these figures are official. (Colonial Records, VIII, 634.)

[3] This is the Regulators' own statement. Others vary. (See Life of Caldwell, p. 157.)

[4] Few had been indicted and consequently outlawed for participation in the Hillsboro riots. He was a carpenter, and lived just outside of Hillsboro. It is said that his mind had become unbalanced because Fanning had seduced the young woman to whom he was affianced. (Caruthers's Life of Caldwell, p. 158.) Fanning insisted that he should be executed on the spot because he had taken part in the destruction of his (Fanning's) house. The Regulators claimed that Few was not present when the house was destroyed. This claim, however, was not advanced by the most reliable authority. (Cf. Colonial Records, VIII, 648.)

[5] Colonial Records, VIII, 608, 609. There is no evidence that any of the sixty-two indictments of the court held at Newbern had come to trial.

[6] Ib., VIII, 613. About 6,000 had taken it on July 4; Ib., IX, 9.

and directed him to tender publicly the King's thanks to the troops for their loyal conduct during the campaign.

On May 29 the army moved westward. On June 4 it was joined by General Waddell's column, and on June 6 the united forces celebrated at the Moravian settlement the King's birthday and the recent victory.[1] On June 9 they marched away to Hillsboro, where they arrived on the 14th. Four days later a court-martial tried the prisoners. Some were convicted[2] of treason. On the next day the army was drawn up to witness the execution of six of these. The other six were pardoned by the English Government at the request of Tryon.[3] On the 8th of June General Waddell had led his forces back by the way he had come, and now, with the prisoners hanged as an example, nothing remained to be done but to march the governor's column back to Newbern.[4] This task Tryon left to Ashe. He himself hastened to Newbern, where on the 30th of June he embarked for his new government, and with his exit there disappeared the war of the Regulation.

Two features of this campaign should have further notice. One relates to the trial and execution of the six prisoners. This has been called cruel. All punishment is cruel. Looked at from Tryon's standpoint the prisoners were rebels. They were executed as traitors. It was hoped that their death would strike terror to the Regulators, and this seems to have been accomplished. They were tried at a special term of the superior court.[5] Two were acquitted and twelve condemned. One of those executed was Benjamin Merrill, formerly a captain in the Rowan militia. He died repenting his connection with the Regulation, and asking that his wife and children might retain his lands.[6] Tryon recommended that the request be granted. James Pugh, however, died steadfast in his principles. He read the governor a lecture from the barrel which served as a scaffold, and was going on to speak to Fanning when the barrel was overturned and the prisoner was strangled.[7]

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[1] Colonial Records, VIII, 592, 593.

[2] There had been several courts-martial for the trial of prisoners. (Cf. Colonial Records, VIII, 587, 594, and 598, 599.)

[3] Ib., VIII, 635, and IX, 274.

[4] Ib., VIII, 649–650.

[5] Ib., VIII, 650, 712.

[6] Ib, VIII, 650 and 656. The request was granted (Ib., IX, 65–66.)

[7] Caruthers's Life of Caldwell, pp. 165, 166.

The other incident relates to Thomas Person, whose later prominent life demands that his connection with the Regulators be more fully stated. Just what this relation was does not appear. He was certainly a Regulator in spirit. He seems to have been such a one as Husband, not actively participating in the movement, but sympathizing with it and seeking to guide it. We usually find his name associated in it with Husband's. The two were appointed referees by the Regulators of Rowan when the officers there agreed to arbitrate,[1] and they were members of the assembly on behalf of the Regulators. Both were persecuted by the assembly, and some of the Regulators thought that both were expelled.[2] This statement is not true as regards Person. He was arraigned for perjury at the instigation of Richard Henderson, before the short assembly of 1770, but the matter was not decided.[3] The case was revived and the charge of extortion added in the assembly of 1771.[4] The matter was referred to a committee, which entirely exculpated Person, and declared that the prosecution was due to envy and malice.[5] The report was ordered to be printed, and Henderson was commanded to pay the cost of the prosecution, which was £117.[6] This action was taken just before adjournment. Tryon said that it was in a thin house, and that the verdict would be reversed by the next assembly,[7] and it is true that at the next meeting of the assembly that part of the above resolution which taxed the costs on Henderson was rescinded.[8] When Tryon was marching through the country he took Person and carried him a prisoner to Hillsboro. Whether he was tried there or not does not appear. There is a story[9] to the effect that evidence of his guilt was removed through the destruction, either by himself or by Rev. George Micklejohn, of certain papers at his house.[10]

[1] Colonial Records, VIII, 533.
[2] Ib., VIII, 646.
[3] Ib., VIII, 118.
[4] Ib., VIII, 326, 333.
[5] Ib., VIII, 448, 449.
[6] Ib., VIII, 461, 467.
[7] Ib., VIII, 525.
[8] Ib., IX, 196, 208.
[9] Ib., VIII, p. xxviii.

[10] A letter was published in the Boston Gazette, August 11, 1771, in which an unnamed prisoner was said to have been taken to Wilmington and there released on bail. Saunders supposed that this prisoner was Person (Colonial Records, VIII, pp. xxviii, and 635, 636). This is an error. The letter itself contains the strongest evidence that the prisoner resided at Cross Creek (Fayetteville), and Tryon's letter book makes it certain that it was John Wilcox, a merchant of that place. (Ib., VIII, 718.)

Josiah Martin succeeded Tryon as governor. When he arrived in the colony he found that the work of his predecessor in subduing resistance had been effective. By July 4, 6,409 persons had taken the oath of allegiance.[1] The completeness of the change in Orange is shown by the election of 1771. John Pryor was dead and Husband was expelled, two vacant seats being thus created. To fill these the county choose Ralph McNair and Francis Nash, both strong anti-Regulators.[2] Most of the outlawed leaders were in hiding, some being in South Carolina.[3] Husband had fled to Maryland first and then to Pennsylvania.[4] They now begged for mercy. Either through friends or in person Jeremiah Field,[5] Ninian Bell Hamilton,[6] Matthew Hamilton,[7] James Hunter,[8] Thomas Welborn,[9] William Butler,[10] and John Fruit,[11] petitioned the governor for pardon. Martin was unwilling to act on the matter, inasmuch as Tryon had referred the whole affair to the Crown.[12] He recommended waiting, although the assembly had asked for the pardon of all but Husband, Butler, and Howell.[13]

In 1772, when the governor made a visit to the back counties, the outlawed leaders surrendered themselves, quietly giving bond for their future appearance at Hillsboro court.[14] This was, perhaps, not as submissive as it may seem. The riot law, having been made for one year only, was already expired, and it was a question whether or not the defendants could be tried under it. Martin called on the chief justice and the associates for an opinion on the matter. The consensus of the replies was that the defendants could not be treated as outlaws under the above act, but that they could be tried under any other law, as the law of treason.[15] This discouraged further prosecution of the suits, and so far as the courts were concerned

[1] Colonial Records, IX, 9, 78.

[2] Ib., IX, 177. Fanning seems to have left the province by this time. He went to New York, where he was a Loyalist in the Revolution, and after the war removed to British America, where he was much honored as the governor of Prince Edwards Island. (Cf. Wheeler, II, 331.)

[3] Colonial Records, IX, 20.

[4] Ib., IX, 14.

[5] Ib., IX, 40, 41.

[6] Ib., IX, 38, 39.

[7] Ib., IX, 84.

[8] Ib., IX, 37, 85, 86.

[9] Ib., IX, 25–27.

[10] Ib., IX, 99, 100.

[11] Ib., IX, 93.

[12] Ib., IX, 57.

[13] Ib., IX, 169 and 173.

[14] Ib., IX, 313, 314, and 348.

[15] Ib., IX, 333–339.

the matter stopped there. A general amnesty act by the colonial assembly was all that was needed to close up the case. The British Government advised such an act, but in 1773 the provincial upper house rejected it because the proposed bill did not contain enough exceptions.[1] When the Revolution was beginning the King, as a matter of policy, had the governor to issue a proclamation of pardon for all who had been concerned in the Regulation, with the single exception of Husband.[2]

The attempt to secure reform in local government had thus failed most signally. The people had now either to submit or to move out into the wilderness again. Many of them choose the latter alternative. It was just at the time when the tide of immigration had broken over the mountains into that fertile part of North Carolina which afterwards became Tennessee. The hopelessness of their condition was to many a greater evil than the dangers of the western forest. Accordingly they joined the wagon trains for the west. A number left before the battle of Alamance, and many more after it. Morgan Edwards visited the country in 1772 and wrote: "It is said 1,500 departed since the battle of Alamance, and to my knowledge a great many more are only waiting to dispose of their plantations in order to follow them."[3]

The immediate remedial effect of the Regulation was slight, although some bills were passed that were in line with the purposes of the movement. The offensive county officers remained and in some cases the Regulators lost the representatives they had gained. It was abroad that the movement had its greatest effect. In Pennsylvania and Massachusetts, where the people were on the verge of revolution, lurid pictures of the struggle of the oppressed North Carolinians were given in the press.[4] For example, the Boston Gazette published the judicial sentence,[5] "That you, Benjamin Merrill,[6] be carried to the place from whence you came, that you be drawn from thence to the place of execution, where you are to be hanged by the neck; that you be cut down while yet alive; that your bowels be taken out and burnt before your face; that your head be cut off; your body be divided into four quarters, and

[1] Colonial Records, IX, 621, 622.
[2] Ib., X, 90 and 405.
[3] Ib., VIII, 655.
[4] Ib., VIII, 635–648.
[5] Ib., VIII, 643.
[6] Ib., X, 90 and 405.

this to be at His Majesty's disposal; and the Lord have mercy on your soul."[1] This was but the formal sentence for treason and does not indicate any particular cruelty in Tryon's official yet it was doubtless published for effect. A short while later the same paper said that a certain "glorious triumvirate should consist of Bernard, H——n, and Tryon."[2]

It has often been thought strange that the Regulators had but little to do with the Revolution. They were mostly Tories. Jeremiah Field was in the habit of saying in his old age that he had fought twice, once for his country and once for the King, and been defeated each time, and that he would fight no more.[3] This loyalty has usually been attributed to the Regulators' idea of the sanctity of an oath. They have been supposed to have realized in this the biblical ideal of the man who swears to his own hurt and changes not.[4] That the oath of Tryon had an influence on their conduct is very likely; but another strong influence was their distrust for the men who led the Revolution. The same men who had oppressed them, whom they had tried to turn out of office, whom they had fought, by whom they had been defeated, and who still kept the offices through which they had received their wrongs—these men now came to the Regulators asking aid in a movement which, to say the least, was of doubtful issue.[5] Among those who led the new movement only one man could be found who was of note among the Regulators; this was Thomas Person, a member of the provincial council. Many of the Revolutionary officers had led troops at Alamance. In 1775 two regiments were raised for the American service; of the first James Moore was colonel and Francis Nash lieutenant-colonel; of the second Robert Howe was colonel and Alexander Martin was lieutenant-colonel.

[1] Colonial Records, VIII, 643.

[2] Ib., VIII, 639.

[3] Caruthers's Life of Caldwell, p. 177.

[4] Ib., p. 172.

[5] In January, 1776, Governor Martin reported that from 2,000 to 3,000 of the Regulators had given him assurance that they were ready to march to the aid of the King's Government wherever it was necessary. (Col. Recs., IX, 1228, and X, 406.) A month later they were preparing to join the governor, who was then on a ship at the mouth of the Cape Fear. (Ib., X, 452.) A body of Regulators and Highlanders was assembled and marched down the bank of the river. They were intercepted just before they reached Wilmington, at Moores Creek, and entirely defeated. Among the prisoners were several prominent Regulators. (Ib., X, 465, and 485, 486.)

In each superior court district a battalion of militia was formed. In Hillsboro district James Thackston was made colonel and John Williams lieutenant-colonel; while Adlai Osborne was made lieutenant-colonel of the Salisbury district. Caswell was colonel of the Newbern district and Edward Vail of the Edenton district. All of these had been prominently opposed to the Regulation. In civil affairs it was the same story. Samuel Johnston, the author of the riot law, exhibited himself at Hillsboro in 1775 as president of the provincial congress. This was a remarkable object lesson.[1] In the provincial council there were Samuel Johnston, who presided; Samuel Ashe, Abner Nash, Samuel Spencer, and Waighstill Avery, while William Hooper was a prominent member of the provincial congress and a representative of the State in the Continental Congress. All these the Regulators were accustomed to look upon as enemies.[2] The entire government was in the hands of the officeholding aristocracy of the several counties. For these the mass of the Regulators had little sympathy and less confidence, certainly not enough to induce them to break an oath which both policy and religious ideas prompted them to keep. In view of their past experience they doubtless asked themselves what good it would be to overthrow the existing government and set up another in which Samuel Spencer, James Thackston, Francis Nash, John Williams, Thomas Polk, John Ashe,[3] and Samuel Johnston were ruling elements.[4]

Did the Regulation begin the Revolution? Was Alamance the first battle of the struggle for American independence?

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[1] The Regulators were not indifferent to the sight. It seems that the congress actually apprehended violence at their hands. (See Waddell: A Colonial Officer, p. 155.)

[2] Wheeler, I, 71–82.

[3] Thomas Polk was a colonel and John Ashe was a brigadier-general. (Ib. 75 and 79.)

[4] In 1775 William Hooper and his associates in Congress wrote from Philadelphia to the provincial council of North Carolina, suggesting that two ministers be employed to go among the "Regulators and Highlanders" to teach that the cause of the Colonies was the cause of God and to neutralize, as far as possible, the effects of Tryon's oath. Congress had directed that this be done and had offered to pay the expenses. This, however, was before the American cause meant an assertion of independence, and Hooper appears to have contemplated only joining the Regulators with the others in a protest against British misgovernment. (Cf. Colonial Records, VIII, p. xxiii.)

We ought now to be able to answer this question. This investigation leads to the view that the Regulation could have no direct connection with the Revolution. I can see no continuity of influence. The Regulation did not make the later struggle inevitable. If it had never happened, the armies of Washington and Clinton, of Greene and Cornwallis, would have fought out their battles much the same as they did fight them. As was remarked at the beginning of this paper, the Regulation was aimed at agents of government; the Revolution struggled for principles. The one was organized and led by men who were almost entirely hostile to the leaders of the other. It is true that some Regulators were in the armies of the Revolution, but the great majority of them were Tories.

There is a sense, however, in which the Regulation influenced the Revolution. The struggle was a grand object lesson to the whole country. It set the people to thinking of armed resistance. Failure as it was, it showed how weak the British army would be in a hostile country.[1] It taught the North Carolina troops who served with Tryon to appreciate the feelings of such an army. The two campaigns of Tryon developed the military organization of the province. When the Revolution began, it was only necessary that this organization should be put into motion. It was thus that the brilliant little victory at Moores Creek was secured, with the result that the most loyal section of the South was kept from joining the British and thus opening a way to cut off from the Federation the three southernmost colonies.

History will often be questioned as to the justness of this matter. The answer will be chiefly on the side of the Regulators. The opinion of Governor Martin is worth quoting. He is generally conceded to have been an honest and sensible man, although he was, by unfortunate conditions, inevitably condemned to defeat. In 1772 he took a journey through the back counties, and while at Hillsboro wrote to the British Government: "I now see most clearly that [the people] have been provoked by insolence and cruel advantage taken of the people's ignorance by mercenary, tricking attorneys, clerks, and other little officers, who have practiced upon them every

[1] It is worthy of note that when the Revolutionary struggle was about to open, Tryon was one of the few British officials in America who warned the Home Government that to reduce the colonies was a serious task. (See Tudor's Life of Otis, p. 428.)

sort of rapine and extortion," and who had enlisted the aid of government in order to cover their own transgressions. This exasperated the people and "drove them to acts of desperation and confederated them in violences which, as your lordship knows, induced bloodshed, and, I verily believe, necessarily."[1] Three months later, after he had returned to Newbern, he modified his opinion slightly. He then wrote that he was fully convinced that the people had been—

> grievously oppressed by the sheriffs, clerks, and other subordinate officers of government, and exceedingly moved my compassion; but, on the other hand, I can assure your lordship there was not wanting evidence of most extravagant licentiousness and criminal violences on the part of that wretched people, which [being] provoked by the abuse I discovered, or by other causes that might be inscrutable to me, seems at length to have urged matters to a crisis that necessarily terminated in bloodshed. Upon the whole, I am not without hopes, my lord, that the vigorous measures taken by my predecessor under those circumstances may have a tendency to keep under the disorderly spirit.[2]

This view seems eminently correct, and with it we may rest our case.

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[1] Colonial Records, IX, 330.
[2] Ib., IX, 357–358.

XII.—A CHAPTER IN THE LIFE OF CHARLES ROBINSON, THE FIRST GOVERNOR OF KANSAS.

By Prof. FRANK W. BLACKMAR, of the University of Kansas.

Next to the settlement of the first colonies on the Atlantic Slope, there is no more interesting illustration of the actual development of government and law and the building of States than that of the settlement and development of a Western State by Eastern immigrants. Coming from all the different States of the Union and from Europe, and entering suddenly an unimproved country with no means of wealth except the fertile soil and other bounties of nature, they form themselves into organizations, they develop government, make law, and establish system and order of association. More peculiar than perhaps that of any of the older States of the West, on account of the rapidity of settlement and the special struggle which went on dividing the settlers into different groups on each side of the Free-State policy, was the founding and building of Kansas. It sometimes happens in the history of nations that a single law throws burdens upon a community and makes the settlement of questions impossible without bloodshed and strife. Such was the condition following the agreement known as the religious peace of Augsburg, of 1555, when the struggle of the great powers over religious doctrines was relegated to local authorities to settle as best they might. It ended in throwing a greater part of Germany at the mercy of marauding bands and tramping armies and crushing out much of the best life of the people. It was so in Kansas when the Missouri Compromise was repealed and there was submitted therefor the Kansas and Nebraska bill, which made Kansas a Territory and allowed the settlement of a great national issue by the citizens of the local territory. Bloodshed, war, and strife were inevitable, and the facilities and conditions of these were enhanced

by the attitude of both North and South, as each section strove to send into this Territory the largest number of opposing factions on both sides of this great question.[1]

In this great struggle, while the rank and file of the people, as is usual, fought the battles and endured the hardships which made Kansas a free State, there were leaders in the Free-State cause. Among others were the fanatic agitator and fighter, Brown, the fiery, erratic, and eloquent Lane, and the wise, conservative, and courageous Robinson.[2]

As the influence of the last named was perhaps greater in the founding and building of the State of Kansas than that of any other single individual of those who dwelt within its borders, he is made the central figure in the bit of history presented in this paper.

Robinson was well calculated for leadership of the people. He was of sturdy New England stock, a descendant of John Robinson, of Plymouth Company fame. He appeared in Kansas in June, 1854, as general agent of the Emigrant Aid Society of New England, whose purpose was to furnish Free-State settlers for the Territory of Kansas, to settle, to build homes, to establish freedom by living and voting, and, if necessary, by fighting. There were strong backers to this movement, among whom were Amos A. Lawrence, of Boston, and the intrepid Eli Thayer.

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[1] See annual report of American Historical Association: "Annals of an historic town," by F. W. Blackmar.

[2] Governor Charles Robinson was born at Hardwick, Mass., July 21, 1818. His father was a farmer; in politics a strong Abolitionist. The son was educated in the schools of Hardwick and at Amherst College. After taking a thorough medical course, he practiced his chosen profession at Belchertown and Fitchburg. At Springfield, Mass., he opened a hospital in connection with Dr. J. G. Holland. His health failing, he went to California in 1849, where he remained two years, returning in 1851. On the journey out he acted as physician to a Boston company; on his return he was shipwrecked on the coast of Mexico. While in California he became identified with the settlers and miners in their struggle against the "land grabbers," in which he took the part of the settlers. The settlers were victorious. Although Dr. Robinson was wounded and imprisoned, he was acquitted of all charges preferred and set at liberty, subsequently taking his seat in the California legislature, to which he was chosen while he was a prisoner. After returning to Massachusetts he was editor of the Fitchburg News for two years. Soon after he became agent of the New England Emigrant Aid Society, and entered Kansas in June, 1854. From that time on he was identified with the Free-State movement in Kansas. He died at his home near Lawrence, Kans., August 19, 1894.

Robinson's field was in Kansas, with occasional visits to the center of supplies for instructions. He had been through Kansas before, in 1849, along with a party of Bostonians on their way to California to seek gold; hence he knew something of the country. His thorough education in Massachusetts and his marked ability as a practicing physician prepared him for dealing with men; his experiences on his California trip and while in that State prepared him for leadership. On his way from St. Louis to Kansas he had fallen in with a class of emigrants from the South who were to be his enemies, and he thus found out something about the people with whom he was to come in contact in the future.

As a leader Robinson was always conservative. It is true he was stubborn, courageous to a fault; but not blindly partisan in anything. He was too intelligent and fair minded to follow a cause unless he was convinced that it was right. It was his conscientious adherence to a line of right conduct, according to the dictates of his conscience, which led his friends to accuse him of vacillation; but he was following a well-marked path of rectitude according to his own judgment. Parties and conditions might change from side to side; he would antagonize all or any of them if they came in his way. He was in Kansas to make Kansas a free State, and to this greater ideal he was ready at any time to subordinate or sacrifice smaller plans. Other men were better subjects for the orator, but not for the historian. His head was always clear, his judgment sure, his advice sound; and in the troubled condition of Kansas at this period these were essential qualities.

Strong partisan bias struck deep into the institutions and soil of Kansas. Much of the history of the State has been written from a basis of hero worship. Even to-day there are many conflicting statements concerning its early history, just as there were conflicting parties in the guerrilla warfare of those days. How could it have been otherwise, with the hustling of the thousands from the different parts of the country; with the incoming of Abolitionists, Free-State and Proslavery men, Whigs, Free-Soilers, National Democrats and local Democrats, and voting squatters? Every shade of political opinion was represented here. How could it have been otherwise, with eight governors appointed by the National Government within six years and the one Free State governor alongside, and within the same time the numerous conventions, the four State

constitutions, and the several different legislatures that were convened from time to time to exercise the will of the different factions? Combine with these discordant elements numerous aspirants for office, who were ready to use every condition and all men to satisfy their ambition, and you have a history which it will be difficult to trace correctly until time has worn away personal and party prejudice.

The phases of the Kansas struggle are many. At first there was a struggle for land—for position and standing room. This led to many personal and individual struggles, much injustice, and crime. Second, there was a struggle of towns for position and for government. There was a struggle of the Free-State and Proslavery marauding bands, sometimes called armies, which engaged in skirmishes which were sometimes called battles. There was the struggle of the Territorial government, with its numerous governors backed by the United States, against lawless enemies. Finally, there was the battle of the constitutional conventions and legislatures. This last phase represents the most important by far of the great events of early history, and it is in this that Robinson appears more prominent.

He had not failed to take an important part in the struggle for a town site by the settlers of Lawrence. Here we find him defending the interests of the settlers of the Bostonian party. His position as agent of the Emigrant Aid Society made him the natural defender and leader of the Free-State party, and as soon as it became necessary for organization we find him a leader against the opposition. Robinson was greatly impressed with the idea of making Kansas a free State. He was an organizer, a diplomat, a man who could measure men and parties. He knew when to keep still, when to speak, and how to give clear expression to his ideas.

The various followers and supporters of Brown, Lane, and Robinson have vied with each other in magnifying the deeds and character of their respective hero. Many of the unsettled points of Kansas history depend for their final verdict on the attitude of these three men, who have each in turn been called the savior of Kansas and the leader of the Free-State cause. Each has his place in the struggle, but, as Robinson well admits, it was the people who saved Kansas and not the leaders.

Lane came to Kansas as a politician, and he watched his opportunity well. His great object was to attain the United

States Senate. This was his purpose in coming. For this he forced his filibustering measures upon the people; he posed for their votes and their applause. He was an orator of no mean pretensions. By reducing his voice and manner to a sepulchral intensity he could magnify the most trivial thing to appear like the impending doom of hell over his audience; he swayed his hearers at his will. A young writer of his day, afterwards Senator John J. Ingalls, described him as follows:

His voice is a series of transitions from the broken scream of the maniac to the hoarse, rasping gutturals of a Dutch butcher in the last gasp of inebriation. The construction of his sentences is loose and disjointed; his diction is a pudding of slang, profanity, and solecism; and yet the electric shock of his extraordinary eloquence thrills like the blast of a trumpet; the magnetism of his manner, the fire of his glance, the studied earnestness of his utterances finds sudden response in the will of his audience, and he sways them like a field of reeds shaken by the wind.

Lane always had a crowd when he was announced to speak; everybody came, whether friends or foes, and they listened well to his illogical harangues. Says an old resident of Kansas:

He talked like none of the rest. None of the others had that husky, rasping, blood-curdling whisper, or that menacing forefinger, or could shriek "Great God" on the same day with him.[1]

Judge Kingman called him a great natural orator. He said:

By a great natural orator I mean a man who can stand up before 500 men, 250 of whom are ready to hang him to the next tree, and at the end of a half hour have them all cheering for him.[2]

It is said that James H. Lane did actually verify this condition.

Lane was of some help to the Free-State cause even in his erratic way. He stirred the enthusiasm of men; he kept the subject ever before them; he swayed them at his will. In speech, at least, he was a great fighter, although he was frequently absent from the head of the column on the day of battle. He started out with the attempt to organize the Democratic party in Kansas. This party could not rally enough volunteers to make an organization. Logically, Lane took up the Free-State cause and went with the majority, but not until prominent Free-State men had promised to make him United States Senator when the party was victorious. His views of methods of procedure did not agree with those of Robinson, and these two men finally became lifelong enemies. At last

[1] Noble Prentis, in Kansas City Star. [2] Ibid.

Lane reached the United States Senate. When the war broke out he returned to Kansas and became a sort of brigadier-general and filibustered over Kansas and the surrounding States. When about to take command of a larger army and extend his filibustering, "Major-General" Lane came in contact with General Hunter, and after the interview the former announced that it was his "sad and simple duty" to return to the United States Senate. In 1865 he was again elected to the Senate. But from that time on his command of popular applause in Kansas weakened. Finally, soured, discontented, and unbalanced, he took his own life, a sad but not a surprising ending of such an eventful career.

John Brown had no method in his madness. Worshiped as the hero of Harpers Ferry, and at one time supported by many of the members of the Free-State cause, his star wanes and fades as the strong light of history is turned upon it. When Brown came to Kansas with his radical measures he found a few radical men who supported and upheld him. By his actions these were bound to the Free-State cause; beyond that his influence was rather harmful to the cause of liberty than otherwise. His Kansas record will not bear the enlightened touch of history. His whole life accomplished but one great thing; it revealed to the hearts and minds of the people their own thoughts, and in this way he became a power in the land. As a mythical hero he aroused enthusiasm for the cause which put down the rebellion and eradicated slavery. But no rational historian to-day can sanction the course he pursued in Kansas.

Brown and Lane both talked of a "higher law" which placed them above the recognition of Federal authority. He was disgusted at the Free-State party because it was not thoroughly Abolition in nature. He had no use for conventions, legislatures, and laws. These were too formal. He believed not in talk; he believed in action. He arose to speak but once, and then by his vehement antislavery doctrine drove the Free-State Democrats into the Proslavery party. But he became a terror to the foes of the Free-State party as well as a menace to the latter's cause. "He and his sons and followers came forth at the notes of the conflict as the eagles to the slaughter, and then went away."[1]

[1] Noble Prentis.

On the contrary, the actual services of Robinson are the more apparent to the people and to the historian as years disclose the real situation of the case. Mr. Amos A. Lawrence, of Boston, who watched every movement in Kansas from its foundation, in speaking before the Massachusetts Historical Society in May, 1884 paid this tribute to the character of Charles Robinson:

He was cool, judicious, and entirely devoid of fear, and in every respect worthy of the confidence reposed in him by the settlers and the society. He was obliged to submit to great hardships and injustice, chiefly through the imbecility of the United States Government's agents. He was imprisoned, his house was burned, and his life was often threatened. Yet he never bore arms or omitted to do whatever he thought to be his duty. He sternly held the people to loyalty to the Government against the arguments and example of the "higher-law" men, who were always armed, who were not real settlers, and who were combined in bringing about the border war, which they hoped would extend to the older States. The policy of the New England Society carried out by Robinson and those who acted with him in Kansas was finally successful and triumphant.[1]

While Robinson always took pains not to antagonize or defy the Federal authority—the only Government recognized by the Free-State men in Kansas—he was also a strong supporter, if not originator, of the position against the "bogus" Territorial legislature and the "bogus" laws enacted by it in 1855. Armed bands from Missouri took charge of the election precincts, overawed some of the judges, appointed others, and elected the entire Proslavery ticket. A new election was ordered in several districts in which fraud was apparent, which resulted in the election of several Free-State men. When the legislature assembled it unseated the Free-State men, who were truly elected, and replaced them with Proslavery men, and then proceeded to enact the so-called "bogus laws" of the early history of Kansas. These laws were peculiarly obnoxious to the Free-State men. They were worse; they were infamous. They made it a crime punishable by death to "entice, decoy, or carry away out of this Territory any slave belonging to another"[2] with the intent to procure his freedom or deprive the owner of his services. They went further and prescribed the same punishment to those who should assist in procuring the freedom of a slave. It was further provided that if any one should "print, write, publish, or circulate any

[1] The Kansas Crusade, by Eli Thayer, p. 191.

[2] Laws of the Territory, 1855, chapter 151.

book, magazine, handbill, or circular containing any statements, arguments, opinions, or sentiments calculated to produce disorder and rebellious disaffection among the slaves of the Territory, or to induce such slaves to escape from the service of their masters, or to resist their authority, shall be guilty of felony, and shall be punished by imprisonment at hard labor for a term not less than five years."[1] Persons bringing any books of the same nature into the Territory were to be subjected to the same penalty. If any person maintained by speech, writing, or assertion that persons had not the right to hold slaves in the Territory he was to be subjected to imprisonment at hard labor for a term of not less than two years.

While the organic act of the Territory had left the slavery question open to the people, a fraudulently elected legislature had thus attempted to give final settlement to it. The Free-State men felt warranted in resenting any such attempt to usurp the authority and rights of the people, and refused to acknowledge the legislature or its laws. Conventions were called at Lawrence and elsewhere for the expression of the will of the people, and Robinson, with other leaders, advised a complete ignoring of the laws of the legislature.

At a convention of the people held August 14, 1855, it was resolved, among other things—

> That we consider the attempt to establish a Territorial form of government in this Territory an utter failure; and that the people of this Territory should, at some convenient period, assemble at their several places of holding elections in the various districts of the Territory, and elect delegates to a convention to form a State constitution for the State of Kansas, with a view to an immediate State organization, and application, at the next session of Congress, for admission into the Union as one of the States of the American confederacy.[2]

It was resolved to hold another convention at Topeka on September 19 to perfect the plan for Statehood. In the meantime a general convention was held at Big Springs, at which it was resolved—

> That we owe no allegiance or obedience to the tyrannical enactments of this spurious legislature; that their laws have no validity or binding force upon the people of Kansas, and that every freeman among us is at full liberty, consistently with all his obligations as a citizen and as a man, to defy and resist them if he chooses to do so.[3]

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[1] Laws of the Territory, 1855, chapter 151.
[2] The Kansas Conflict, p. 170.
[3] Ibid, p. 171.

The resolutions proceeded to explain the reasons and further define the position of the Free-State men.

Another delegate convention, held September 19 of the same year at Topeka, provided for an election of members to the convention to form a State constitution and to apply for admission to the Union. This convention met at Topeka October 23 and continued in session until November 11. Here the Topeka constitution was framed, subsequently put to a vote of the Free-State men and unanimously adopted, and the petition for admission into the Union laid before Congress. This petition passed the House of Representatives, but failed to pass the Senate. But the Free-State men proceeded nevertheless to elect Charles Robinson governor, together with other State officers, and provided for the election of a legislature. For two years this legislature was kept together, and the constitution formed a rallying point for the Free-State men. The Free-State men refused during this period to vote with the Proslavery men for the election of Territorial officers until October 5, 1857, when the former were again persuaded to take a part in the election and carried it with a majority.

In the meantime, the Proslavery people observing the failure of the Topeka constitution, the Territorial legislature enacted a law providing for a constitutional convention which was to meet September 7, 1857, and frame a constitution. This convention met according to law and framed the Lecompton constitution, which went before the people December 21, 1857. At first the Free-State men intended to go to the polls and vote on the constitution and overwhelm its promoters with a large majority, but the tickets were so arranged that "the constitution with slavery" or "the constitution without slavery" meant the constitution in either case. Believing this to be unfair, the Free-State men refused to vote. Then followed an election of State officers and of the legislature under the Lecompton constitution. The Lecompton constitution went before Congress, but, fraud being shown in its formation and election, it was again referred to the people January 4, 1858, when it was lost by a large majority vote.

The result of this election gave 6,266 votes for the "constitution with slavery" and 569 votes for the "constitution without slavery." It was estimated that a large number of these votes was fraudulent. The Free-State men petitioned Governor Stanton to assemble the legislature to make provision for sub-

mitting the constitution unconditionally to a vote of the people. This being granted, the legislature met and submitted the constitution to the people. The result was, for the constitution with slavery, 138 votes; for the constitution without slavery, 23; and the vote against the constitution was 10,226. Having no faith in the Democratic Government at Washington, the Free-State men elected State officers and a legislature under the Lecompton constitution in order to change it if Congress should recognize it as the law of the land. There was no object now in pressing the Lecompton constitution upon the people of Kansas, consequently the "English bill" provided for a final (third) vote on this peculiar enactment, which resulted in 1,788 for and 11,300 against, which silenced all clamor for it.

While action was pending on the Lecompton constitution a bill passed the Territorial legislature which provided for the calling of another constitutional convention, but as the governor thought Kansas already had constitutions enough he failed to sign the bill. Subsequently the advocates of the measure met in convention and framed a new constitution and established the seat of government at Minneola in connection with a land speculation. Finally the seat of government was removed to Leavenworth, and the unimportant document was known as the Leavenworth constitution. It was on a par with the Topeka constitution, so far as legality was concerned, but lacked the support of the latter. This constitution held that Kansas should be free to both whites and blacks. In contemplating the process of constitution making in Kansas one is impressed with the idea that the speculator, the demagogue, and the office seeker were abroad in the land, and that the struggle for liberty carried on by the patriots of Kansas was frequently defiled by their touch.

While this battle of the constitutions was proceeding efforts were made by a body of filibusters, headed by Lane, to force the issue to a military contest. They desired to prevent the formation of the Lecompton constitution by forcibly dispersing the convention. They made the military board which was formed by the legislature the basis of an organized secret armed attack on all Proslavery centers. These rash movements were thwarted by Robinson and his followers.

It finally became necessary to abandon all previous constitutional schemes, and March 28, 1859, a vote was cast calling the

Wyandotte convention. A large majority voted for the holding of this convention. A new constitution was formed and adopted by the people and application for the admission of the State into the Union under this constitution was made to Congress. The election of a legislature and of officers under this constitution made Charles Robinson governor of the Territory of Kansas for the second time, with no apparent legal power to act. Kansas must abide under the Territorial government another two years. It was not until January 21, 1861, that the bill for the admission of Kansas passed the Senate, and the same passed the House January 28 and was finally signed by President Buchanan.

In all of this battle for constitutions the Free-State people, under the guide of Robinson, insisted on their rights to have a fair ballot, and sought to avoid encounters with Federal authority, while they persistently and firmly opposed Territorial encroachments on these rights. The counsel of Robinson during this entire struggle was always relied upon by the people. Undoubtedly he believed in the abolition of slavery, but he did not believe in an open attack upon the United States Government for the purpose of repressing it, for that would have been treason. He proposed only to the people that they follow the organic act of Congress, which permitted them to vote in the decision as to whether Kansas should be a slave or a free State. He held that it was right at all times to struggle for justice and a fair ballot, and when the time came to settle the question that way it would be final. He was always ready to meet his opponents at the polls when justice and a fair count could be obtained. The movement to repudiate the Territorial government was started in his Fourth of July oration delivered in 1855, in which he reviews very carefully the position of slavery throughout the United States and in Kansas, and reviews the result of the step. The triumph of the Proslavery party had been complete; the Free-State men were circumvented. Says Robinson:

> What are we? Subjects, slaves of Missouri. We come to the celebration of this anniversary with our chains clanking about our limbs; we lift to heaven our manacled arms for supplication. Proscribed, outlawed, denounced, we can not so much as speak the name of liberty except with prison walls and halters looking us in the face. We must not only look upon black slavery in our midst against our wishes, but we must become slaves ourselves.

Reviewing the situation in Kansas, he finally said:

If the people of Missouri make it necessary by their unlawful course for us to establish freedom in that State, in order to enjoy the liberty of governing ourselves in Kansas, then let that be the issue. If Kansas and the whole North must be enslaved or Missouri become free, then let her be made free; aye, and if to be free ourselves slavery must be abolished in the whole country, then let us accept that issue. * * * Fellow-citizens, in conclusion, it is for us to choose for ourselves, and for those who shall come after us, what institutions shall bless or curse our beautiful Kansas. Shall we have freedom for all her people and seek prosperity, or slavery for a part with blight and mildew inseparable from it? Choose ye this day which you will serve, slavery or freedom, and then be true to your choice. If slavery be best for Kansas, then choose it; if liberty, then choose that. Let every man stand in this place and acquit himself like a man who knows his rights, and knowing dares to maintain them. Let us repudiate all laws enacted by foreign legislative bodies or dictated by Judge Lynch over the way. Tyrants are tyrants and tyranny is tyranny, whether in the garb of law or in opposition to it.[1]

Such were the sentiments proclaimed by the leader of the Free-State party on the first Fourth of July celebration by the people of the Territory of Kansas. They met a ready response in the hearts of the patriots of Kansas. The support of sentiments of this nature meant courage in strife, but the leader and his followers never flinched in defense of the platform.

In May, 1857, Governor Robinson, accompanied by his wife, started on a journey to Washington in the interests of the Free-State cause in Kansas. It was immediately after the attack on Lawrence, during which Governor Robinson was in command of all the forces for defense. The grand jury at Lecompton indicted several parties, among whom was Robinson. This was a well-laid plan to dispose of the leaders of the Free-State party. Before Robinson was indicted he was arrested and taken from the boat at Lexington, Mo. He was brought to Leavenworth and then to Lecompton, where, with others, he was confined on the open prairie in a camp of the United States soldiers. He remained a prisoner for about four months. But during this time he found opportunity to direct the Free-State movement in the Territory. Governor Robinson was arrested under two indictments, one on account of the defense of Lawrence, and the other on account of acting as governor and issuing proclamations instructing the Topeka legislature. While in prison he refused to allow parties on the outside to rescue him, as he said this would bring on an

[1] Kansas Daily Tribune, July 14, 1855.

open collision with the Federal authorities and ruin the Free-State cause. After the arrival of Governor Geary, Robinson with other prisoners were released on bail, September 10, 1857. The cases were never called.

In his messages of March, 1856, and June, 1857, Governor Robinson used mild language and calm argument to show that the people had a right to meet and form a State constitution, make a State organization, elect officers, and apply for admission into the Union. He gives strong expression of his loyalty to the United States Government. He said:

> The rights of a free people we love, the Union we regard, the integrity of the Government we will maintain. The devotion of the people of Kansas to the Union is evinced by the stern reality of their suffering and endurance. In wisdom and devotion the people of Kansas will struggle to preserve the Union. Should they ever be permitted to enjoy the happiness of sisterhood, they will do so by endeavoring to make the Union worth preserving, without which it will inevitably crumble into pieces.[1]

During the struggle it was finally deemed proper for the Free-State people to vote for officers on the 4th of January, 1858. Up to this date they had held themselves aloof from the elections for a period of several years. Governor Robinson favored voting in this election with a hope of obtaining a majority in the Territorial legislature. He expressed himself as much in favor of the Topeka constitution, as in the main it held to the Free-State idea, and that to enter this election was not backing down. He said:

> Let our platform be the people against usurpation; we can vindicate our sovereignty at the ballot box. It is said that the Administration is afraid of blood. It is nonsense; they only seek an excuse to hang a few of us.

Following the course marked out by Robinson and other advisers, the Free-State men obtained an overwhelming majority. When General Geary became governor of Kansas, Governor Robinson resigned his place to go to New England in the hope of bringing influence to bear upon the United States Administration so as to complete a peaceful arrangement of the difficulties in the Territory. For this he was abused for deserting his party and his position. Nevertheless, he acted in good faith, and when Geary's plan failed he withdrew his resignation, much to the pleasure of the legislature and of the people. When the Senate investigating committee, sent out for the

[1] From original copy printed in the office of the Quindaro Chindowan.

purpose of inquiring into the condition of the government in Kansas, placed Governor Robinson on the stand, he told simply the truth as he viewed it. In this investigation he criticised the violent wing of the Free State movement in Kansas headed by Brown and Lane. For this he suffered much abuse and calumny from the opposite party, but he lived to survive it all, and came off triumphant. He was also accused of a bond swindle, out of the trouble of which he came without a smirch.

While governor of Kansas articles of impeachment were brought against him by his archenemies, but these, too, failed. Looking back over his life through the light of unprejudiced history, we find that he was ever consistent with his own doctrine and his own plans; he swerved never to the right or the left in making Kansas a great free State. He was loyal to the people, to Kansas, and to the United States Government. Unwarranted attacks by his enemies, their heated abuse and slander upon him, make his own course appear to-day more rational and righteous because of disapproval by such persons. When he became governor of the State of Kansas, in his first message to the legislature he expressed the sentiment that Kansas would do its full duty in the support of the National Government. He said:

> While it is the duty of each loyal State to see that equal and exact justice is done to the citizens of every other State, it is equally its duty to sustain the Chief Executive of the nation in defending the Government from foes, whether from within or from without—and Kansas, though last and least of the States of the Union, will ever be ready to answer the call of her country.

And so it proved, for the State furnished more soldiers, in proportion to the inhabitants, in putting down the rebellion than any other State of the Union.

XIII.—THE CONTINENTAL CONGRESS.

By Dr. Herbert Friedenwald.

The Continental Congress occupies a most interesting and important position in our national and political history. Suddenly brought together to meet a pressing emergency, its membership was made up from the most thoughtful among the men of the country. Few of them, if any, conceived that events would so happen that they would be called upon to adopt a policy which must inevitably lead to establishing a new power among the nations. And yet bold measures followed each other so closely, and in such logical order, that it is frequently difficult to believe that some of the stronger minds did not designedly shape their sequence.

While the Congress has gained special prominence as the directing head of a great war, it was far more of a force than this, although the attributes of its jurisdiction were for the most part gained by reason of its participation in the armed struggle. A single governmental authority with ill-defined powers, it exercised as occasion arose the functions of an executive, of a legislative, and of a judicial body, but not always in like degrees of efficiency. Purely revolutionary in its nature, it continued in existence because of receiving the popular sanction to carry out a definite object. But obtaining its support from the people through the cumbrous medium of colonial or State legislatures, there resulted frequent hesitation and indetermination and disastrous delay. In addition, public opinion was widely divergent, and to conform to it political insight of no mean order was requisite.

The Congress, too, was the laboratory wherein were performed many experiments in government before a satisfactory national constitution was finally evolved; and the experience there gained in other lines besides those of government was often drawn upon on subsequent occasions.

Through its instrumentality, also, the States were kept in touch with one another in a manner such as had never before been possible, and men learned to see that there were broader interests at stake than those bounded by narrow State lines. Finding that protection from the common danger was to be obtained by means of the strong arm of the Congress, a sentiment for union was aroused, which, weak at first, passed through various stages of development until the bonds were at length firmly knit.

If we bear these facts in mind and make a careful examination of the transactions of the Congress we can but conclude that, with small exception, we know little of its methods of work, of the nature of the problems that came before it for solution, and of the reasons for solving them as it did.

The investigator who undertakes to clear up these points has at his command such a wealth of original documents that all who have made an examination of them have paused rather because of the abundance than because of the paucity of the material; for no welcome index is at hand to lighten the labors of research.

Such as may be termed official documents, and which are deposited at the Department of State, at Washington, may roughly be divided into two classes: (1) The Journal of the proceedings, and (2) the papers of all kinds other than the Journal.

The Journal affords but little information beyond the mere record of the passage of resolutions, of the receipt of letters, and of the appointment and report of committees. After August, 1777, when the yeas and nays began to be recorded, we may glean, from the frequency with which they were demanded, how and with what amendments many of the more weighty resolutions were passed. Although this Journal is our main source of reliance and is almost wholly in the hand of Charles Thomson—to whose care and diligence are due the rather orderly preservation of nearly all our Revolutionary material, and whose services to the cause of history have never been adequately recognized—it varies much in the fulness of its report.

In print, exclusive of the Secret Journal, which is in the main concerned with foreign affairs, it fills a total of nearly three thousand pages. But, while it requires a half of these volumes to record the events of the first four years, the acts and reso-

lutions of the next ten are crowded into the remainder. It can not be said, either, that the events of the earlier years overshadow in importance those beginning with the year 1779. We know that this is not the case, and if any additional proof were necessary the voluminous papers, other than the Journal, establish this beyond a peradventure.

Beginning with the year 1779, although as many letters were received and as many committees reported as before that time, the printed Journal fails to mention more than a tithe, and soon makes note of them only in special cases and when immediate action is taken. A careful comparison of the manuscript with the Journal as printed shows that this is not altogether the result of imperfect editing, but that there was a decided change, at the period mentioned, in the method of keeping the record. As a general thing, the proceedings are more briefly recorded; of many transactions no account at all is kept, and often the only way of discovering when a letter was received or a committee reported is by referring to the indorsement upon the back of the document itself. Nor does the material to be found in the printed Secret Journal fill up more than a portion of the gap.

Contrary to a general supposition, however, there are few matters of very material interest and importance which yet lie buried in the manuscript. The omissions concern a variety of miscellaneous subjects, and occur at odd intervals, beginning with the year 1780. There seems to be no adequate explanation for the exclusion of these items, inasmuch as we gain from them a little additional information upon the organization of the old Federal Court of Appeals in Admiralty cases, which Professor Jameson has so exhaustively studied; some new data relating to the lengthy New Hampshire Grants controversy and the cession of Virginia lands; a point or two upon such matters as the conduct of military and financial affairs, and the regulation of a national post-office; and, finally, many highly enlightening details upon so valuable a matter as the Congressional banquet given on the 4th of July, 1785, to which fifty persons were invited, including Congress, which took place at the hour of 5 o'clock, and the bill for which was footed by the Board of Treasury.

Of the contents of the other manuscript documents, it is needless to say more than that they contain material upon every subject conceived of by the fertile brain of the Ameri-

can of a hundred and more years ago. They are contained in near three hundred folios of about three hundred pages each, some of which are duplicates or transcripts, and are arranged in a more or less orderly manner, for the most part in the covers of the last century; although the directing hand of the present régime has made some improvements and restorations, out of a hopelessly inadequate fund, in a painstaking and able manner, preserving the original order of arrangement. Of the other documents in print and manuscript at the disposal of the investigator, the majority are well known and are quite too numerous for the preservation of his peace of mind.

With such a mine before us, how much of it has been worked? It requires but brief examination to show that little more than the topsoil has been removed.

The popular and to a great degree the scientific mind has always been much attracted by the opportunities afforded for recounting the story of successful deeds at arms, and the display of heroism in adversity. In consequence, the purely military features of the Revolution have received such adequate treatment, from nearly every point of view, that only here and there does an obscure point yet await elucidation.

The diplomatic relations of the struggling country with foreign nations have also been given much attention, so that even the large amount of new material that has recently come to light will but serve to be corrective of detail rather than make the rewriting of the whole story an absolute necessity. However, a complete diplomatic history of the Revolution, which takes into account the new evidence, is much to be desired.

Next to these, the financial affairs have, perhaps, received the most careful consideration, although many think that to the abundant material which has appeared on this subject extensive and important additions and corrections have yet to be made. Then, if we include certain more or less isolated articles upon the history of the adoption of the Declaration of Independence and the Articles of Confederation; upon the Ordinance of 1787 and the movements of population westward; and upon the relations of Congress with the Indians, we have embraced the greater part of the printed information at our command.

It is obviously impossible that the Congress, in the fourteen years of its existence, transacted no business other than such as should be classed under the heads enumerated above, and

to some of the subjects still awaiting investigation it may be well to direct attention.

First of all we know little about the manner in which the Congress was organized; what rules for its guidance were adopted; how they were changed and recast as time wore on and new spirits entered the legislative halls, and how custom fixed the rule for as much as was set down in the regular code. For it is well to remember that no one set of rules of procedure held the field for any long period. Not a year came but brought with it some alterations, and during 1777 they were made almost monthly.

By closely examining the methods of work of the Congress and their inception and nature we can discover, and in no other way, why it was that affairs of the greatest moment were often tabled or committed, and left lie unheeded until the exigency had risen to the point of a crisis. From such an examination we will learn that a body of about twenty-five men controlled the destinies of the nation; that their number often fell below twenty-five, but never rose to more than thirty-five; that their time at evening, at morning, and at noon was taken up with such a multiplicity of wearisome details that the wonder is not that affairs were delayed, but that they ever accomplished even a small portion of what was brought forward for their consideration. To take an instance at random: On one of the days when the Articles of Confederation were up for exhaustive debate, and when they alone were of sufficient moment to warrant receiving the whole attention of a congress or convention, the subjects claiming consideration were of a most varied nature. Beginning with the reading of a voluminous correspondence from different quarters, the appointment of express riders, suggested in one of the letters, was acted upon. Then, as Captain White Eyes had sent a message, his communication was disposed of by reference to the Committee on Indian Affairs, with the assignment to them of sundry duties. Next, the commissioners of Congress in foreign lands were granted an important extension of powers, whereby agents might be summarily dismissed for neglect of or disqualification for office. No day's labor was ever complete, either, without giving some notice to the affairs of the army. This time the but too frequent complaint of need for arms, ammunition, and clothing reaches their ears, and to the board of war is confided the trust of making provision for the

wants of the army. The Board of Treasury, too, having recommended appropriations, its advice is heeded, and sums ranging from two hundred to fifty thousand dollars are ordered expended, for the most part to pay just debts due to the soldiery. Nor was this all; for standing and special committees were in the meantime busily engaged in the preparation of reports to be submitted for Congressional action.

With so much of importance claiming attention, we can readily comprehend what an amount of logrolling was necessary, and of this we can learn much from the correspondence of the day; for none of the letters are more fruitful of information than those written by certain of the members, who took the oath not to divulge the secrets of the body.

Much is yet to be learned of the economic activity of the time, and of the part played by the Congress in originating and developing the commercial and manufacturing interests of the country. The details of the various methods, some devious, some not, for gathering supplies, not alone of military stores, but of clothing, cloths, blankets, and provisions—articles so necessary to the very existence of the army—form of themselves an exceedingly valuable adjunct to the history of the military campaigns. Ordinarily these matters are mentioned, and little more, under the head of the diplomatic negotiations, or are referred to when the results of strategic manœuvers are summed up; but such treatment loses sight not alone of the quantities of supplies gathered from within the country itself, but of their method of collection and distribution, and of the encouragement by bounty given to induce the manufacture of the needed articles.

Then, too, it may not be uninteresting to know how this large body of men were subsisted; in how far they lived on the country in the immediate vicinity, and what were the facilities for obtaining provisions from other quarters. This, in turn, will throw light upon the doings of the commissary and quartermaster's departments, with their ofttimes unhappy transactions.

The mention of the enterprises of a commercial nature entered upon by the Congress itself calls to mind the participation of the privateersmen in the struggle, for they lent no small aid in accomplishing the successful issue of the war. Something of the value and extent of their contributions may be appreciated when we consider that before the end of 1776

nearly three hundred and fifty prizes had fallen into the hands of these American adventurers and the rates of insurance had risen in England to twenty-five per cent. So large was the amount of booty obtained in this way, and so great were the attractions offered, that the rage for privateering is frequently assigned as the cause of the deficiencies in the battalions of Congress and the States.

In view of the fact, too, that the army and its doings have proved the all-absorbing topic of research, it is somewhat remarkable that we know so little in a definite way of the means resorted to to bring it together and to prevent its disintegration—what cajoling and coaxing were required, as we are often told, to prevent men from going home before their terms of enlistment had expired, the while their crops needed sowing or were rotting in the fields; whether desertions were due to a lack of patriotic feeling, or whether individual independence of action had become so much of a principle that men would brook no interference with their free choice of serving their country or their families, as to them seemed most fit?

Quite as, if not more, important are the accounts of the necessity for an early resorting to bounty giving and drafts to fill up the regimental quotas. For, in dealing with these measures, Congress, both by special legislation and by urgent recommendation to the States, early took an active hand. Such being the case, we are able to rectify one of the most widespread of false impressions, namely, that Congress as a body, and some of its more celebrated members, were averse to long terms of enlistment. On the contrary, Congress was willing and anxious to get an army for a long period or for the war, and took steps with such an end in view some time before the Declaration was agreed to. But the adoption of such a policy was wrecked by the opposition of the people. Their objections arose from a diversity of opinions, and varied in different parts of the country. Here they held back for the worldly motive of ability to obtain greater pecuniary reward in other directions; there the elements of ignorance of and inability to appreciate the critical import of the particular period must be given due weight when we seek to reach an impartial decision. For communication was slow and often sorely impeded, and it took a long time before the people of one State knew what those of another had accomplished. As a result, many of the evidences of lukewarmness were due, as

Washington put it, to lack of means whereby to draw forth the resources of the country.

Nor can we admit that men held off because of a deep-seated dread of the power of standing armies. In this time-worn argument a strange confusion of thought is easily discernible, for there is a wide difference between a foreign army sent to enforce irritating legislation, and which must of necessity cause hostility, and one raised from within the country and receiving the sanction for its existence from the popular will. In the one case there is oppression, in the other representative force or revolution.

Closely related to the organization of the army is that of the humane hospital corps, for those were not the days of the Red Cross Brotherhood. Its services were of great assistance, and its arrangement was many times chan ged before the point of efficiency was reached. Nor were enmity and jealousy always absent from the council board of those charged by Congress with the execution of its desires.

The relations with the Indians afford the opportunity for much instructive study, for the Congress changed its policy toward them with the frequency of the change in the character of its own membership. Sometimes war was waged against them; now they were enlisted to fight in the cause of liberty, and again measures were passed looking toward their pacification and education.

These are some of the principal subjects that occur to us from an examination of the Journal, but their number could, with little effort, be greatly extended, for in making a close study of the doings of the old Congress from the point of view of the members themselves we are enabled to put quite a different face upon its transactions. By taking up the Journal day by day, by following the correspondence as it was received, and by noting the appointment and report of the hundreds of committees, we can learn to see events as they appeared to the members, and find the explanation for many of the most incomprehensible of their actions. Supplementing this with such other information as is accessible, it is possible to put into the old Congress something of the breath of life, to "cover with flesh the dry bones," and to give it more of a human and, perhaps, a trifle less of a heroic character.

In such wise we are enabled to discover that many of the tendencies which were subsequently crystallized into actuality

under the Constitution here first had their origin or were here given additional development. By this we mean not merely the growth and development of institutions like the Executive Departments of the Government, but we have reference to the larger questions of the relation of the States to the centralized Government, such as it was; of the refusal of Congress to take part in any of the affairs connected with the regulation of the internal police of the States; of the early stand on the question of separation of church and state, and of the refusal to become sponsor for any one sect or religion, favoring all equally.

Besides, there were such matters as appeals to Congress to take in hand controversies between States and individuals within the States, over which the smaller bodies soon appreciated that they had no jurisdiction; as the insistence by Congress before the period of confederation on the absolute control of foreign negotiations, and as the avowal that upon the shoulders of this body rested the burden of providing for the common defense and general welfare.

Closely connected with all these is the matter of rotation in office, and the changes in the character of the membership of Congress—changes which, since the results of recent Congressional elections in this country, we can perhaps better appreciate, making it possible to account for them in much the same manner as those in the character of the House of Commons within recent years are explained; for with the adoption of the new Constitution, with the growth of the dignity of Statehood, and the extension of the franchise came the spread of democracy and democratic ideas, which, receiving an impetus at this period, were further impelled as the results of the election of 1800, until finally launched by those of 1828.

We know how good men constantly fail of reelection in our own day. Is it not likely that majorities, amid the excitement of those times of dissatisfaction with the failure to put an end to the ravages and conquests of the enemy, were quite as fickle or perhaps as desirous of change as are those of our own time?

And was it not due to these changes in the make-up of Congress, as well as more directly to the multiplicity of affairs needing attention, that the adoption of the Articles of Confederation, of whose origin so little is now to be found in print, was put off so long as it was? And ought we not, in considering the shortcomings of these Articles, to make due

allowance, as is often done when mention is made of the first constitution of the French Revolution, for the fact that one and the same body, amidst the fatigues and perplexities of governing the country, was called upon to devise a new plan of government for it?

These subjects are all worthy of most careful consideration and study; and while there has been no desire to belittle or undervalue in any way the many contributions made to a better understanding of the period, the thought occurs that as this was a body called into being by reason of exceptional circumstances, which lived a life of great usefulness, and died while witnessing its noble offspring rise to take its place, should not this body have its story related as that of a special phase of our history, in many ways dissociated from and in still more connected with preceding and succeeding events? For, as Professor McMaster picturesquely puts it, after drawing a skillful comparison between the Congress and the Long Parliament and National Assembly: "The memory of the Continental Congress is bound up with that portion of our national history which we contemplate with feelings of peculiar pride; with the sacrifices and the sufferings, more cruel than the grave, of the eight years of war; with the poverty, the struggles of the six years of peace that preceded the organization of the Federal Government. The republics which the Long Parliament and the National Assembly set up have long since disappeared from the face of the earth. The republic which the Continental Congress set up still endures." To us a history of the transactions of this remarkable body of men, the Continental Congress, seems most desirable, and to its preparation somewhat as outlined above have been devoted the better part of the past three years.

XIV.—THE LABOR MOVEMENT IN ENGLISH POLITICS.

By Edward Porritt.

A singular fact about the labor movement in English politics is that it began in Parliament and worked downward into municipal politics. Labor representation in the House of Commons dates back twenty years, while labor representation on town and county councils dates back only to about 1889. Yet it is easy to account for what at first seems an inversion of the traditions concerning beginning at the bottom and working upward. Thirty years ago organized labor in England stood in an uncertain and anomalous position before the law. It had then a series of legislative demands to press upon Parliament, and to the existence of these demands and to its uncertain legal position was due the first movement of trade-unionism into national politics.

The political movement began before the trade-unionists were possessed of the parliamentary franchise. Workingmen living in the towns first exercised the parliamentary vote in 1868; those living in the rural districts in 1885. In 1867, however, a royal commission was appointed to inquire into the organization and conduct of trade unions. The commission owed its origin to trade-union outrages in Sheffield in the early sixties, and from the circumstances under which it was called into being the trade-unionists were apprehensive that any legislation the commission recommended would be to their disadvantage. Moreover, about a year previous to the appointment of the commission the trade-unionists had suffered a severe blow in the law courts. It had been laid down from the bench that as trade unions were not recognized by the law, the law could give no protection to their funds. This decision in the law courts and the apprehension of further legal restraints as a result of the Sheffield inquiries brought

about a crisis in the history of trade unions; and at this juncture a special representative committee was appointed to watch over trade-union interests. The committee sat in London. At first the idea was that it should be a temporary organization, but the usefulness of the committee commended itself to the trade-unionists all over the country, and the committee became what since 1868 has been known as the Trade Unions Congress. The congress held its first annual meeting in Manchester. Its second was held in Birmingham in 1869, and at this conference labor representation in Parliament first became a definite policy with the trade-unionists.

Before this time two trade-union leaders, both active members of the trade congress, had sought seats in the House of Commons. There was a general election in 1868, and at this election Mr. George Howell contested Ailesbury and Mr. W. R. Cremer was a labor candidate at Warwick. Neither candidate was elected. At the 1868 general election many of the candidates in the Liberal interest were compelled to adopt programmes calculated to arouse and enlist the sympathies of the newly enfranchised working-class electors. The new electors, however, did not succeed in sending to the House of Commons a single representative of their own class, and it was not until the general election of 1874 that labor members found their way into the House of Commons.

For the last thirty years the English coal miners have been exceptionally well organized in their trade unions. The miners are perhaps not better organized than the men in the iron and shipbuilding trades, or the London printers; but they were the first trade-unionists to elect members of their own organizations to the House of Commons, and to appropriate money from their union funds for political purposes. The coal miners were the first trade-unionists to avail themselves of the new democratic conditions established in the towns by the reform act of 1867, and again when the reform act of 1884 came into operation in 1885 the miners turned it to account more generally than any of the other trade-unionists; in fact, the agricultural laborers of Norfolk and the miners of Wales and the north of England were the only trade-unionists who went actively into national politics after the reform act of 1884.

No class of workmen in England is touched more frequently by the law than miners. In other trades the factory laws interfere with adult labor only indirectly through the regula-

tion of the working hours of young people. With miners the interference of the law is direct and constant. It regulates their descending and ascending of the mine, their work below ground, and also their connection with much of the work that is done on the pit head. Again, unlike the members of many other trade unions, miners are frequently the dominating force in the electorate in many of the constituencies in the mining counties. It is so in Durham and Northumberland, in some parts of Lancashire, and in many parts of South Wales. In these constituencies the parliamentary candidate who secures the unanimous support of the miners is certain of election. The trade-union leaders of the miners have also always been more given to politics and public speaking than the secretaries of the other trade unions. Nearly all the leaders of the miners are or have been temperance lecturers and local preachers of the Methodist Church.

At the general election in 1874, although only a very small proportion of the miners were then enfranchised, they returned two members to Parliament. Those of Northumberland secured the election of Mr. Thomas Burt for the borough of Morpeth. In the Midlands the miners were instrumental in returning the late Mr. Alexander Macdonald as member for the borough of Stafford. These were the only labor members in the 1874 House of Commons. Both of them acted with the Liberal party. About 1880, when this Parliament was drawing to a close, a labor candidate came forward to contest a by-election in Southwark. The Liberals nominated a candidate for the seat; the labor candidate persisted in going to the polls, and, as a Conservative candidate was already in the field the presence of the labor candidate led to a three-cornered fight, the first contest of the kind due to the labor movement in national politics. Such contests were not infrequent at the general elections of 1886 and 1892, and at the election which is now approaching more than a score of these three-cornered contests are threatened by the action of the Labor and Socialistic parties.[1]

At the general election in 1880 Messrs. Burt and Macdonald were again returned, and a seat was secured at Stoke-upon-Trent for Mr. Broadhurst, who was then the parliamentary

[1] At the general election in July, 1895, the Independent Labor Party put forward 28 candidates, and the Social Democratic Federation 4 candidates in September, 1895.

secretary of the Trade Unions Congress. When the 1880 Parliament came to an end, Mr. Burt and Mr. Broadhurst were the only labor members. Mr. Macdonald died soon after his election, and the seat at Stafford passed out of the hands of the trade-unionists.

In the next Parliament, that chosen in 1885, the number of labor members was largely increased. At the 1885 election the newly enfranchised voters in the rural districts exercised the parliamentary franchise for the first time, and the labor movement became a distinct force in English politics. Mr. Burt and Mr. Broadhurst were reelected, and the labor group was brought up to ten by the election of four more miners' members, a representative of the agricultural laborers of Norfolk, and of three trade-unionists who were chosen for working-class constituencies in London. All the five mining members in the 1885 Parliament were officials of miners' unions, and their unions not only paid their election expenses, but made them extra allowances to defray the cost of attendance at Westminster. Mr. Broadhurst was in receipt of a salary from the Trade Unions Congress. The representative of the Norfolk farm laborers was also a unionist official, so that seven of the ten labor members were at Westminster at the direct expense of trade unions. The other three were former trade-union officials, but they received no financial help from trade unions at their elections nor were trade-union funds drawn upon to maintain them in Parliament.

The Parliament to which these ten representatives of labor were elected in 1885 went to pieces over the home-rule bill in 1886, and three of the labor members failed of election to the next House of Commons. The other seven were returned, and in the Parliament which lasted from 1886 to 1892 the labor group was increased from seven to twelve by the adhesion of members who, although elected as Radicals and unconnected with trade unions, were men of pronounced working-class sympathies, actively interested in the trade-union movement, and who for all practical purposes could be counted as of the parliamentary labor group as it existed from 1886 to 1892.

It was in the closing years of the 1886 Parliament that what is now known as the new trade-unionism came into existence. The new unionism originated with the strike of gas workers in London in 1888, and immensely increased its strength as a result of the dock strike in 1889. It differs in several important

particulars from the old unionism—from the unionism which up to this time had dominated the Trade Unions Congress, and which from trade-union exchequers had maintained six or seven representatives of labor in the House of Commons. The outstanding difference between the old and the new unionism is that the old unionism concerns itself exclusively with skilled labor, while the new unionism seeks to organize and combine unskilled laborers. The new unionism is much less cautious and infinitely more aggressive than the old unionism. As one of the old-unionism leaders described it, "the new unionism first orders a strike and then seeks to organize a union among the strikers." Out-of-work allowances, sick and burial benefits, superannuation allowances, and aids to widows and orphans have been important factors in the old unionism from its earliest days. With the new unionism little attention is given to these matters. The new unionists concern themselves almost exclusively with the relations of labor toward capital.

The new unionism was at its strongest in the two years following the dock strike of 1889. It was waning a little in 1892, but it was still strong enough to make its influence felt at the general election, and was responsible for a number of three-cornered electoral contests like that at Southwark. In other places it forced the Liberals to accept its candidates. Mr. John Burns is one of three members in the present House of Commons forced upon the Liberals by the new unionism. Eight mining members were elected in 1892, and the net result of the general election in that year and of the by-elections up to December, 1894, is that in the present House of Commons there are sixteen or seventeen members each of whom owes his presence there to the labor vote. Seven or eight of these members are in the pay of trade unions.

Since the Trades Union Congress in 1869 first declared in favor of the representation of labor in the House of Commons, five Parliaments have been elected. In the first there were two labor members; in the second there were three; in the third, the first elected after the reform act of 1884, there were ten; in the fourth there were twelve; and in the fifth there are sixteen.

From 1874 to 1892 labor members grouped themselves with the Liberals. It was in keeping with the existing order of things that they should do so. In the days when labor members were new at Westminster, and, in fact, until the great

split of 1886, there was a much wider division on industrial and social questions between Liberals and Tories than there is at the present time. The Liberals were much more in sympathy with the labor programme, as it was then defining itself, than were the Tories, and, moreover, the labor members received the full support of the Liberals in the constituencies, and in most cases occupied parliamentary seats which would otherwise have been in possession of the Liberals. Except on the part of the socialists, who have always been opposed to the old trade-union parliamentary representatives, until about 1892 no fault was found with the connection of the labor members with the Liberal party. It was not until the new trade-unionism made its influence felt that this connection gave rise to any hostile criticism.

In tracing the outcome in legislation of the presence of labor representatives in the House of Commons, it is convenient to divide the twenty-seven years which have elapsed since the royal commission on trade unions into two periods.

The first may be described as the era of the old trade-unionism, and may be taken as extending from 1867 to 1889. The second is the period of the new trade-unionism, the unionism which has been most aggressive toward capital and most socialistic in its political tendencies. In summarizing the legislation in the interests of labor since 1867, it must be borne in mind that since the reform act of that year both Liberals and Conservatives have been continuously eager for the labor vote. The competition for the suffrages of the laboring classes began at the general election of 1868; it became keener at each general election between then and the reform act of 1884, and since the act of 1884, which enfranchised 2,000,000 voters, the competition has grown in intensity. It has brought about some remarkable developments in the political programmes of both the old parties, particularly in that of the Conservatives, some of whose later electioneering cries—such as provision of work for the unemployed, drastic reforms of the poor laws, old-age pensions, and measures for enabling workmen to become owners of their cottages—are little short of socialistic.

From 1867 to 1889 Parliament moved slowly and cautiously. From 1889 to 1894 the legislation has been much quicker and more radical and socialistic. In the session of 1893 it was announced from the treasury bench that the Government "had ceased to believe in competition wages;" and on another

occasion that "the time had arrived when the Government might emancipate itself in labor matters from the thraldom of economic abstraction."

The earliest legislation in the first period was in the interest of the trade-unionists. In 1866 the lord chief justice had decided that the law could not protect the trade-union funds. An end was put to this unsatisfactory condition of things by amendments to the criminal law passed in 1868 and 1869, and the position of the unions was again improved by further legislation passed in 1871 and 1876. A well-defined legal status was thus given to the trade unions. Nor was protection to their funds all that the trade-unionists gained by the legislation from 1868 to 1889. An act was passed in 1875 repealing what remained of the old harsh laws against combination on the part of workmen, and amending the conspiracy laws so far as they concerned labor disputes.

A longer list remains of measures in the interest of labor generally, as distinct from trade-unionism. English factory laws date back to 1802, when the health and morals act was passed. This measure prohibited mill owners from working children more than twelve hours a day. It was followed in 1819 by another act fixing the minimum age at which children could commence work in factories at 9 years, and another act passed in 1835 limited the working day of children to nine hours. In 1842 an act was passed prohibiting women and boys under 10 from working in coal mines. In 1844 there was passed another measure, reducing the working day of factory children to five and a half hours.

The factory and mining laws stood thus when organized labor began to take an active interest in politics. The first amendment of the factory laws in the new era was made in 1874, when an act was passed under which women engaged in cotton mills were required to remain away for a month at childbirth. In 1878 all the factory acts passed since the beginning of the century were consolidated, and a number of new provisions introduced. One of these fixed the working week of children engaged in textile factories at fifty-six and a half hours, and of children engaged in nontextile industries at sixty hours. Most of the factory laws are applicable only to women and children; but their operation from the first has had the effect of restricting the hours of men's labor, for work in the mills is seldom continued beyond the hours at which the law insists

that the working day for women shall end. Protection to health and limb is afforded by the factory laws to all workers.

Other measures passed in the first period had for their object protection of the interests of the work people in their financial relations with their employers. An act passed in 1884 made it illegal for an employer to pay wages in a public house, and in 1887 another measure was passed prohibiting an employer from deducting from wages payments due to storekeepers. Several measures were also passed in the period, dealing with the relationships of employers and employed in respect of breaches of contract and of liability for accidents. All these measures were in the interest of the employed.

Prior to 1867, if a workman were guilty of a breach of contract he might be sent to prison for three months. An act passed in 1867 substituted fines for imprisonment. This was a great advance on the old penal law; but even after this reform a police court stigma attached to cases arising out of breaches of contract. In 1875 this was completely removed by an act which divested these cases of any penal character, and decreed that they should take the form of civil suits. The liability of employers for accidents was first dealt with by an act passed in 1880, which, under certain conditions, gave an injured workman a right of action against an employer to whom negligence could be imputed.

Almost as soon as the reform act of 1867 was passed the working classes, led by the trade-unionists, began an agitation for further parliamentary reform. The earliest result of this movement was the ballot act of 1872. The next was the reform act of 1884, which enfranchised the working classes living in the rural districts, who were left untouched by the act of 1867.

There are obvious reasons for the quickened pace at which legislation in the interest of labor has proceeded in the second of the two periods. The tremendously enlarged electorate is one, the public feeling against sweating aroused by the evidence taken before the House of Lords committee in 1888 and 1889 is another, while a third may be found in the immensely increased political activity of the trade-unionists of both the old and the new school since the dock strike in 1889.

A Conservative Government was in power when this second quickening of the interest of the politicians in the cause of labor began, and in the brief period which remained to Lord Salisbury's 1886 administration much was done to give expres-

sion to the new interest in behalf of labor. In 1891 the factory acts were again amended and made much more stringent and far-reaching. In the same year the House of Commons carried a resolution deprecating sweating, and authorizing the Government in all its contracts to insert "such conditions as may prevent the abuses arising from subletting, and to make every effort to secure the payment of the rate of wages generally accepted as current for a competent workman in his trade." This was one of the most important steps in the interest of labor ever taken by the House of Commons. The resolution was binding only on the spending departments of the Government; but the example of the House of Commons was quickly followed by municipal authorities, and fair-wage clauses are now introduced into most of the contracts for public works.

In the first eighteen months of the Parliament elected in 1892 resolutions, bills, and departmental orders in the interest of labor followed each other in quick succession. The admiralty, the war office, the post-office, and the education department all advanced the wages of unskilled laborers employed by them, shortened the working day to eight hours, and otherwise improved the workmen's condition. The lord chancellor and the chancellor of the Duchy of Lancaster added a large number of workingmen to the magisterial benches in the boroughs, and the president of the board of trade, who had a labor member as his vice-president, in addition to greatly extending the scope of the labor department, appointed a number of seamen to the marine boards at the seaports. The home office also added fifteen or twenty new members to its staff of factory inspectors, all of them appointed from the ranks of the working classes.

As soon as the new House of Commons began work it showed the same solicitude in the cause of labor that had been shown by the preceding House in its closing days. By a majority of 47, a resolution was carried in favor of the payment of members of Parliament. Two eight-hour day bills were introduced, one applying only to miners and the other a general measure. Neither of them was carried through the House of Commons. A little later in the session of 1893 a resolution was moved from the opposition side of the House setting forth that in the matter of wages, hours of work, insurance against accidents, and provision for old age, the Government at its dockyards and arsenals should set an example to private employers

throughout the country. The Government promptly accepted this resolution, and made the now famous announcement that "it was not able to close its eyes to the change which had in recent years come over public opinion in England in the matter of relationships between employers and employed; that it had ceased to believe in competition wages, and would frame its contracts accordingly."

Three bills in the interest of labor were introduced by the Government in the session of 1893, only one of which became law. This was the railway servants' hours of labor act, which empowers the board of trade to proceed against railway companies which overwork men engaged in handling trains. Of the measures which failed, one had for its object the establishment of conciliation boards; the other sought to reenact the employers' liability act of 1880, with drastic changes in the interest of labor.

In regard to the political position of labor, two measures were introduced, one an amendment to the registration acts, which failed to become law; and the other the parish and district councils act, which has come into operation this winter. This act places the democracy in the rural districts in as good a position as regards participation in local government as the working classes in the towns.

Since 1889 the labor party has pushed itself into municipal politics. It has formulated a socialistic programme to be adopted by the municipalities when the labor men get control. So far the labor party has principally confined itself in municipal politics to demands for the establishment of municipal workshops; for an eight-hour day for municipal work people; for the abolition of the contract system in all works paid for out of public money; for remunerative work for the unemployed; and for reduction of the salaries of the legal, engineering, and clerical staffs in the municipal civil service; and to attempts to compel school boards and town councils to usurp many of the functions and duties which Parliament has, since 1834, imposed on the boards of guardians for the relief of the poor.

XV.—THE ORGANIZATION OF THE FIRST COMMITTEE OF PUBLIC SAFETY.

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The National Convention met September 21, 1792, to offer the French people a new constitution. Like its predecessors, the Constituent and Legislative Assemblies, it left to a body, then called the Provisional Executive Council,[1] over which it had no immediate control, the real work of administration. But from the very first there were serious conflicts[2] between this Council and the commissioners[3] sent from the Convention to reorganize the armies. The Convention itself also, and its committees, early encroached upon executive functions, and by orders and counter orders gravely obstructed the routine work of the Government. Civil and military officers instinctively adapted themselves to the situation, and began to address letters and dispatches directly to the Convention. So great was the evil that the Council by formal decree,[4] October 29, forbade such contempt of its authority on the part of those who were legally its subordinates. Attacked thus on all sides, and unequal to the struggle, the Council by the end of the year came to be "plus occupé à se défendre qu'à agir, et quand il agissait, il ne manquait pas de se retrancher derrière quelque moyen de sauver sa responsabilité."[5] At least one statesman of the Republic had anticipated this condition of things. Danton, realizing "que rester ministre n'était

[1] Aulard, Recueil des actes du Comité de salut public, 1: LXVI-LXXV, 1-5.

[2] Aulard, 1:6, 16, 28, 37, et passim.

[3] Called from April 11, 1793, représentants en mission. (Aulard, 3:193, note 1.) Formal name, Représentants de la nation, députés par la Convention nationale à * * * (3:64. Cp. 1: LIV-LXVI.) In this article the shorter names representatives, commissioners, or deputies will be used. The same usage is found in Cambon's report, July 11, 1793. (Moniteur, 17:100.)

[4] Aulard, 1:207-208.

[5] Barère, Mémoires, 2:309.

qu'un moyen de se perdre,"[1] and obliged to choose between the ministry of justice and a seat in the Convention, chose the Convention.

But the Council itself was at fault. The ministry of war, that department which, under the circumstances, was all important, was managed by Pache, the humble servant of the Paris municipality, though "plus funeste à la Républiqne que tous les généraux de la coalition."[2] Roland, the minister of the interior, was frequently absent from the Council. Evidently such feebleness in its government might soon be fatal to a nation which had promised to rescue the oppressed peoples of Europe,[3] perhaps even against their will,[4] and which was soon, for one reason or another, to stand face to face with the scandalized, frightened, and greedy monarchies of England and the Continent.

The first serious step toward a remedy of the evil was taken January 1, 1793, when, on a motion by Kersaint, a Girondin, a committee[5] of General Defence was decreed, composed of three members from each of several important committees already formed. This new Committee had no powers beyond what might be inferred from its general duty of working with the Executive Council upon measures demanded by the approaching campaign and the existing state of affairs.[6] Its records show that it was in no sense a government,[7] for it did not adopt any decrees until late in its career. The sessions of the Committee were occupied, as Barère recalled, in endless deliberations.[8] Without either unity of thought or energy of action, it

[1] Mémoires sur la Révolution, par D. J. Garat: in Buchez et Roux, Histoire parlementaire de la Révolution française, 18:448. Cp. A. Sorel, L'Europe et la Révolution française, 3:76.

[2] Sorel, 3: 245, 248.

[3] Decree of November 19, 1792: "La Convention nationale déclare, au nom de la nation française, qu'elle accordera fraternité et secours à tous les peuples qui voudront recouvrer leur liberté," etc. (Moniteur 14:517.)

[4] Decree of December 15. (Aulard, 1:331–333.)

[5] Its best known members were three prominent Girondists, Boyer-Fonfrède, Brissot, and Gensonné; also Dubois-Crancé and Sieyès; and four of the first Committee of Public Safety, Bréard, Barère, Cambon, and Guyton-Morveau.

[6] Aulard, 1: 389.

[7] Sorel, 3:380: " * * * ce comité ne présentait qu'un moule encore flottant et flasque de gouvernement."

[8] Barère says of it in his Mémoires: "Il n'y avait nulle énergie; la délibération divaguait sans cesse * * *. Les généraux n'obéissaient pas à un comité toujours délibérant et toujours divisé." (2:309.)

could neither command the respect of the generals[1] nor organize effectually the work assigned the commissioners.[2] Had energetic measures been determined upon they could not have been kept secret, because the sessions were open to members of the Convention as well as to numerous secretaries and clerks.[3]

Evidently such a committee was unfitted to cope with the multiplying dangers of France. March 5 a dispatch was read that the Prussians had raised the siege of Maestricht.[4] This event doomed the project for the invasion of Holland and weakened the Republic's position in Belgium. As the extent of the danger became known, the excitement in Paris and in the Convention was intense. March 9 a Revolutionary Tribunal was decreed, an institution which was terrible "pour dispenser le peuple de l'être."[5] On the following day further letters from the northern frontier gave Robespierre an opportunity to attack the actual system of government, which, he intimated, left a barrier between the Council and the Convention, preventing all unity of action, and the results of which were an increasing number of enemies and a decreasing body of sympathizers. He wanted the execution of the laws assigned to a "commission fidèle."[6] In the course of this discussion Cambacérès put the matter with the greatest definiteness. "Tous les pouvoirs vous ont été confiés," said he, "vous devez les exercer tous; il ne doit y avoir aucune séparation entre le corps qui délibère et celui qui fait exécuter."[7] Danton[8] vigorously supported

[1] When Dumouriez presented himself January 13 with certain schemes, according to his story, "on entama des disputes très frivoles et très ignorantes; tous parlaient à la fois, et l'on se sépara après une séance de trois heures sans avoir rien éclairci." Quoted by Gros, Le Comité de Salut public, 20.

[2] It was not until February 1 that the commissioners began to address letters to the committee. The second letter was dated February 7. After this the letters become more frequent.

[3] See Barère's remark in the Convention March 8. (Moniteur, 15:647.)

[4] Moniteur, 15:624.

[5] Danton's March 10 speech. (Moniteur, 15:683.) Danton thought that if there had been such a tribunal in September, 1792, there would have been no September massacres.

[6] Moniteur, 15:674, 675.

[7] Moniteur, 15:681.

[8] His words were: "Déployons tous les moyens de la puissance nationale, mais ne mettons la direction de ces moyens qu'entre les mains d'hommes dont le contact nécessaire et habituel avec vous, vous assure l'ensemble et l'exécution des mesures que vous avez combinées pour le salut public." (Moniteur, 15:683.)

Cambacérès, and demanded warningly of the deputies who could protect them, if they weakly refused the burden imposed upon them, from the wrath and vengeance of a suffering people. Danton's real plan became apparent on the following day when he urged that the "Convention se reserve la faculté de prendre partout, et même dans son sein des ministres."[1] Here was a scheme much wiser than Robespierre's idea of a special committee, a scheme which Robespierre supported to the extent of arguing that it be thoroughly discussed. Danton's main interest in the reorganization of the ministry came from his conviction that only a strong government could bring victory out of defeat. Had he succeeded in carrying through his idea, a ministry responsible to the Convention and controlled by it might have been created, which would have saved France from the worst excesses of the Terror, and laid a foundation in experience[2] for a stable constitution.

Vague perils, largely theoretical, and, perhaps, personal jealousies defeated this plan, as they had defeated Mirabeau's plan, November, 1789. Although the Convention had been intrusted with supreme power, and although it had largely absorbed all the functions of the Executive Council, its majority, including several leaders[3] of the Left or Mountain, thought liberty would somehow be saved if the appearance of a separation of powers was maintained. Certainly a council which dared to act only when screened behind decrees of the Convention or orders from its committees was not a responsible body. The most violent opposition to Danton's scheme came from the Girondists, who suspected that their political enemies,

[1] Moniteur, 15:686. Danton added: "Quel est celui d'entre vous qui ne sent pas la nécessité d'une plus grande cohésion, de rapports plus directs, d'un rapprochement plus immédiat, plus quotidien entre les agents du pouvoir exécutif révolutionnaire, chargé de défendre la liberté contre toute l'Europe, et vous," etc. Von Sybel (Revolutionszeit, 2:243–245), is not convincing when he explains that Robespierre's support was due to a bargain between him and Danton, Danton agreeing to promote the Revolutionary Tribunal if Robespierre would help in the reorganization of the executive.

[2] Cambon suggested the value, July 11, of organizing the new Committee of Public Safety in such a way as "à essayer d'une manière indirecte le nouveau plan de constitution." (Moniteur, 17:102.)

[3] Thuriot, Moniteur, 16:75, and as late as August the majority of the second Committee of Public Safety adhered to the same idea. See report of Hérault-Séchelles, Moniteur, 17:309. Saint-Just in Moniteur, 16:215.

"quelques hommes d'une grand ambition, et d'une grand audace," "ces tyrans-brigands," meant to get hold of the Council, and through it to turn the Republic into "le sujet très fidèle et le tributaire très soumis d'un ville orgueilleuse, d'un dictateur insolent, ou d'une oligarchie sanguinaire."[1] Rumor went into details, and said Danton was to take charge of foreign affairs and Cambacérès was to have the ministry of justice.[2]

Had the Girondists been sound statesmen or even good politicians they would not have offered such a frightened opposition to Danton. There were not lacking indications in his speech that he was anxious to bury party hatred and combine with the true friends of France, on whatever benches of the Convention they sat. Instead of saving themselves from the dictatorship by this action, these alarmists simply hastened it on, as Robespierre prophesied[3] in his first speech on the question. Nor did they permanently stave off the confusion of the powers they were so anxious to avoid, for the Committee of Public Safety, organized within a month, was just such a combination. Moreover, though the Committee was, to a certain degree, responsible to the Convention, it was much less so than a council of ministers selected partly from the Convention would probably have become.

Naturally, the Committee of General Defence, discredited by this whole debate, sent in its resignation, which was not, however, accepted at once.[4] Meanwhile the perils threatening

[1] La Revellière-Lépaux, Moniteur, 15:686–687. Cp. Buzot's remarks, Moniteur, 15:681. Bancal gave the coup de grâce with a quotation from Rousseau: "Celui qui commande aux hommes ne doit pas commander à la loi; celui qui commande à la loi ne doit pas commander aux hommes." (Moniteur, 15:687.)

[2] Le Patriote français, No. MCCCVIII; Buchez et Roux, 25:65. Dubois-Crancé was to be minister of war; Jean Bon Saint-André, minister of marine; Fabre-d'Eglantine, minister of interior; Collot-d'Herbois, minister of contributions. Thuriot was also mentioned in connection with the ministry of justice. But Danton had taken a solemn oath not to accept a position in the ministry as long as he remained a member of the Convention. (Moniteur, 15:686.)

[3] Moniteur, 15:675. Without a strengthening of the executive, said he, "Vous errerez toujours de révolutions en révolutions, et vous conduirez enfin la République à sa perte." Cp. Quinette's words, March 22, Moniteur, 15:773. It is interesting to note that Von Sybel adopts strictly the Girondin view of Danton's proposition, though he offers no substantial proofs. (Von Sybel, 2:242.)

[4] Moniteur, 15:690, and Aulard 2;334. The reporter of the Committee declared that it was "presque entièrement désorganisé."

France were so serious that the obstinate hostility of these Girondist leaders to an effective reorganization of the Government looked like treason to their opponents. The plan of the allies had ceased to be the mere restoration of the Bourbons. When Prince Coburg declared this to be their object at the Antwerp conference he was astonished to find that he had aroused a storm of indignation. England's aim, frankly declared Lord Auckland, was to reduce France to political nullity.[1] And the Revolution was to be fought with weapons as sharp as any which the Jacobins could invent. Count Mercy, the confidential adviser of the Emperor Francis, said again and again in his letters: "On ne peut écraser la Révolution que par 'la terreur.'"[2]

Nor were there dangers on the frontier alone. The overthrow of the monarchy and the risks of social upheaval incident to so radical a struggle had alarmed the conservative and wealthy classes whom the Revolution of 1789 had made the most considerable element of the community. Their sympathy was chilled. Many of them felt that a successful foreign invasion might be more advantageous to them than the continued supremacy of a Convention in which the passion for equality was becoming dangerously similar to lawless fanaticism.[3] What the rich feared the poor could not patiently wait for. This state of public opinion, therefore, disheartened the more patriotic radicals, while it exasperated agitators like Marat. Jean Bon Saint-André, a member of the Left, formerly a Protestant pastor, wrote, March 26, from the south:

Partout l'on est fatigué de la Révolution. Les riches la détestent, les pauvres manquent pain, et on leur persuade que c'est à nous qu'ils doivent s'en prendre. Les journalistes ont entièrement égaré, perverti l'opinion

[1] Sorel, 3:366–67.

[2] Sorel, 3:333. Quoted from his correspondence in Thurheim. Under the impression of Louis XVI's death, Count Mercy wrote that to crush the French people it would be necessary "Faire main basse sur les clubs, désarmer le peuple, détruire cette superbe capitale, foyer de tous les crimes, de toutes les horreurs, produire la famine et la misère, voilà les déplorables données de l'entreprise à remplir." One would be charitably inclined to regard this as purely speculative but for much else of the same sort from similar men.

[3] Thibaudeau, 1:36, speaking of the Revolution, says: "L'amour de l'égalité avait été son plus puissant mobile. Il dégénéra en ivresse, et cette ivresse devint une sorte de fanaticisme. Le peuple qui avait renversé les privilégiés au profit des plébéiens, les renversa à leur tour pour s'emparer des places et du pouvoir."

publique. Les sociétés populaires elles-mêmes ont entièrement perdu leur énergie * * * partout les municipalités, qui sont du choix immédiat du peuple, sont faibles ou corrompues[1] * * *

The commissioners which the Convention had sent out to hasten the recruiting were in many places assailed[2] with the terms "dictators," "disorganizers," "Maratists." Such hostile indifference or angry discontent throughout the country threatened not only the integrity of the Republic, but also the lives of the Republican leaders, especially of those who had signed their hatred of monarchy with the blood of Louis XVI. "On ne pardonnera ni à vous ni à nous," wrote Saint-André in the same letter, "d'avoir voulu la liberté pure et sans mélange et nous devons conduire au port le vaisseau de l'État, ou périr avec lui."

March 22, the day on which the news of the defeat of Neerwinden reached the Convention, the Committee of General Defence was ordered[3] to present a plan for a comité de salut public. In forming its new committee, which it still called the Committee of General Defence, the Convention endeavored to gather together the leading men of all parties, in order, as Barère had suggested a few days before, in the first of his famous reports,[4] "prévenir toutes les défiances, à éteindre les discordes."[5] The Extreme Left was so disgusted by this attempt at harmony that its members took no part in the choice of candidates.[6] This was ominous, but the event was far worse. Robespierre and Guadet, Desmoulins and Gensouné, Danton

[1] Aulard, 2:533, 534. Cp. letter of Barras and Fréron, May 10, 4:92–95.

[2] Letter of Merlino and Amar from the departments of Ain and Isère April 5. (Aulard, 3:110.) Several months later Cambon, in bitter retrospect, declared: "Avec ce mot 'Marat,' on a tout paralysé, et on a empêché des armées de se former." (Moniteur, 17:100.)

[3] On the motion of Quinette. (Moniteur, 15:773–774.)

[4] Moniteur, 15:739, seq.

[5] Not in the Moniteur; quoted by Aulard, 2:492, from Procès verbal, 8:227.

[6] Moniteur, 15:797. H. Morse Stephens (Fr. Rev., 2:229–230, 540) distributes the successful candidates among the parties as follows: Girondins—Petion, Gensonné, Barbaroux, Vergniaud, Buzot, Guadet, Condorcet, Lasource, and Isnard; Plain—Sieyés, Cambacérès, Camus, Quinette, Guyton-Morveau, Delmas, Bréard, Jean De Bry, and Barère; Mountain—Danton, Robespierre, Dubois-Crancé, Rühl, Prieur of the Marne, and Desmoulins. This gives the Girondins 9, the Plain 9, and the Mountain 6; but Fabre d'Églantine, Danton's friend, was also a member. See list, Aulard, 2:514 515, and Moniteur, 15:797, 803. According to M. Arago, the editor of Condorcet's works, Condorcet can, at most, only be called a sympathizer with the Girondins.

and Lasource could not deliberate peacefully, even on the defense of the Republic. Doubtless Danton endeavored to win over the Girondist members to some constructive policy,[1] but they could not trust the man whose hands they supposed were stained with the blood of September. Their reply came April 1, when Lasource stupidly attacked Danton as a tool of Dumouriez, a deadly slander, which led Danton to cry out in Titanic wrath, "Plus de composition avec eux."[2] Discredited by such quarrels, accused by Robespierre[3] of betraying the country to Dumouriez, so besieged by crowds[4] from the Convention that its members could with difficulty take their places about the table, to say nothing of getting an opportunity to speak or to work intelligently, this Committee, or rather this "club," this "congrès des passions individuelles,"[5] failed ignominiously to solve the problem of government.

The need of a committee capable of giving unity to the chaotic attempts to defend the Republic, with sufficient personal influence to bring peace to the Convention itself so that a constitu-

[1] Saint-Just's report on the Girondins, in H. Morse Stephens's Orators of the French Revolution, 2:526. Garat (Mém., in Buchez et Roux, 18:451): "Vingt fois, me disait-il (Danton) un jour, je leur ai offert la paix; ils ne l'ont pas voulue; ils refusaient de me croire, pour conserver le droit de me perdre."

[2] Stephens's Orators, 2:235; Moniteur, 16:30.

[3] Moniteur, 16:52. Marat said the Committee was "presque tout composé d'hommes de la faction d'État. (Moniteur, 16:14.)

[4] Moniteur, 16:71, 116, 128: Often from 200 to 300 deputies were present at its sittings. Aulard, 3:32: The Committee was obliged to decree, April 2, that members alone could deliberate there, and to rule that members should always place themselves about the "bureau." Vergniaud pictured the situation graphically. He said (Moniteur, 16:116, and Stephens's Orators, 1:374): "C'etait un club où il était impossible de travailler, parce que tout le monde y parlait à la fois, et que les membres du comité étaient ceux qui souvent éprouvaient le plus de difficulté pour obtenir la parole." He said Robespierre and his friends rarely came to the sessions, while the Girondins faithfully attended. The enemies of the Committee, he added, heard its discussions and then ran away to report them to the Convention, thus trying to anticipate the committee's measures and to discredit it as a body which accomplished nothing. As far as the records of the Committee tell us, the faithful attendants were the members of the Center, or Plain, while the men of the Left often outnumbered the Girondins. At the morning session March 31 only five of the Committee were present. April 1 and 2 there were eight. Vergniaud's second charge is of as doubtful a character, for a comparison of the records with the debates in the Convention fails to substantiate it.

[5] Barère, Mém., 2:309.

tion might be drawn up was never more felt than at the beginning of April. The legislative acts of the Convention had been becoming steadily more violent in their character and aims, as the dangers multiplied and the consequent excitement and fear increased. The formation of the Revolutionary Tribunal had been followed in a few days by the outlawry of counter-revolutionary rioters and rebels,[1] and that by the creation of revolutionary committees,[2] whose special work was to watch strangers. April 1 the immunity[3] from indictment for treason enjoyed by members of the Convention was taken away; together, April 5, with the safeguard that the Convention alone could send men before the new Tribunal. On April 5, also, a sans-culotte[4] army of 40,000 men was decreed; and the principle of the maximum established, namely, the principle that the price of bread should not exceed a just proportion of the wages of workmen.[5]

It was while the Convention, driven to desperation by the treason of Dumouriez, was in permanent session that a plan for a better committee was brought in by Isnard[6] in behalf of the Committee of General Defence itself. This plan,[7] due partly to Isnard and partly to Cambon, who did not belong to the Committee, provided for a Comité d'exécution of nine members, with power to take, after secret deliberations, all measures of general defence, using the ministers simply as administrators, and with the right of dismissing or arresting all executive agents, and even ministers or generals, on the understanding that the Convention should be at once notified. As the proposed executive committee was to send a weekly report of its operations to the Convention, and as it was to be renewed every month by thirds, it might be held strictly responsible. Furthermore, the Convention was to reserve entire control over the treasury. Here was a plan different in no essential point from Danton's scheme of March 11, but the same influences which defeated Danton then would have defeated this measure

[1] March 19, Moniteur, 15: 751.

[2] March 21, Moniteur, 15: 764. March 29 each householder was ordered to keep a list of the occupants of his house in plain sight on the outside wall. (Moniteur, 15: 837.)

[3] Moniteur, 16: 30. The Convention reserved the exclusive right to indict its own members.

[4] Moniteur, 16: 62, 73.

[5] Moniteur, 16: 73.

[6] Moniteur, 16: 57.

[7] Aulard, 3: 43–44. For text, see below, p. 256, note 5 (*a*).

also had not its friends modified it in such a way as to quiet the theoretical fears of men like Thuriot,[1] who insisted on the preservation of the Executive Council as a responsible body, although Isnard[2] explained that it would not act without authorization from the demoralized Committee of General Defence. After Isnard and Bréard, April 5, had attempted to force some action upon the Convention by resigning[3] from the Committee, Barère, in an able speech, sketched the powers of a possible Comité de salut public. This sketch[4] was clearly based upon a plan already drawn up, which differed from Isnard's plan in its retention of the Executive Council, though the decrees of the council might be suspended by the Committee and although the Committee might itself adopt measures of general defense if the circumstances were urgent. Barère also mentioned no right of arresting ministers, and suggested that the Committee's powers last one month only. Now Barère's modification of Isnard's plan, with the subsequent addition of a credit of 100,000 livres for secret expenses, was, on April 6, adopted as the constitution[5] (c) of the new Comité de salut public.

[1] Moniteur, 16:75. Danton saved the plan from immediate defeat by declaring that it needed to be more thoroughly matured.

[2] Moniteur, 16:70.

[3] Robespierre had resigned April 3. (Moniteur, 16:52.)

[4] Moniteur, 16:71. Selections, note 5 (*b*). Gros, 27, thinks Danton was Barère's prompter in this incident. The committee which reported the successful project were Isnard, Barère, Thuriot, Mathieu, and Danton. (Moniteur, 16:72.) Probably either Thuriot or Danton proposed the 100,000 livres. Thuriot defended the proposal in the Convention. (Moniteur, 16:75–76.) Barère declares in his Mémoires that he always opposed a money credit. Cp. his ideas on the subject with those of Danton. (August 1, Moniteur, 17:295–296.) Mortimer-Ternaux characteristically finds the part Isnard, a Girondin, played in the formation of the new Committee strange.

A glance at article 8 shows that the work on the revised project was hurried, for the name "Comité d'exécution" is used in it for "Comité de salut public." It should be noted also that the constitution of the Committee of the year III returned in several features to the project for this Comité d'exécution.

[5] (*a*) Aulard, 3:43–44:

Article 1er. Il sera nommé dans le jour, par appel nominal, un Comité d'exécution composé de neuf membres pris dans le sein de la Convention.

Art. 2. Le Comité d'exécution délibérera en secret. Il sera chargé de toutes les

(*b*) Moniteur, 16:71:

"un comité délibérant sans publicité * * *

(*c*) Aulard, 3:115–116:

Article 1er. Il sera formé, par appel nominal, un Comité de salut public composé de neuf membres de la Convention nationale.

Art. 2. Ce Comité délibérera en secret. Il sera chargé de surveiller et d'accélérer

Notwithstanding the prominent part the Girondist Isnard had taken in the creation of the new Committee, neither he nor any of his political friends succeeded in gaining an election as a member, unless Jean de Bry, who declined to accept the proffered place on the Committee, be considered one of the party. The men who were elected did not sympathize with the extremists of either section, although many Girondists persisted in classifying Danton with Robespierre and Marat.

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fonctions qui étaient attribuées au Conseil exécutif réuni, et il prendra toutes les mesures de défense générale.

Art. 3. Le Comité d'exécution fera chaque semaine un rapport général et par écrit de ses opérations et de la situation de la République. Il rendra compte en tout temps, lorsqu'il sera requis.

Art. 4. Les ministres seront conservés au nombre de six; ils ne délibéreront plus entre eux et ils seront restreint aux fonctions administratives et purement exécutives qui leur étaient confiées; ils rendront compte de leurs opérations au Comité d'exécution, et signeront tous les actes d'exécution sous leur responsabilité.

Art. 5. Le Comité d'exécution sera responsable de ses opérations. Il pourra suspendre, destituer et faire arrêter tous les agents qui lui sont subordonnés, et lorsqu'il suspendra, destituera ou fera arrêter des ministres ou des généraux, il en rendra compte de suite à la Convention nationale.

* * * pressant l'action du conseil exécutif * * * et suspendant provisoirement les arrêtés du conseil exécutif, quand ils paraîtront contraires au bien public, à la charge d'en rendre compte dans le jour à la Convention. * * *

* * * délibérant dans un cas urgent les mesures de salut public, et en rendre compte à la Convention. * * *

* * * un comité * * * qui ne peut agir sur la liberté civile, mais seulement sur les agents publics qui pourraient être suspects ou impliqués dans quelque conspiration. * * *

* * * toujours responsable à la Convention nationale toujours surveillé par tous ses membres * * *

* * * réglé dans toute sa marche par le registre et la signature de ses délibérations * * *

* * * établi pour un mois * * *

l'action de l'administration confiée au Conseil exécutif provisoire, dont il pourra même suspendre les arrêtés, lorsqu'il les croira contraires à l'intérêt national, à la charge d'en informer sans délai la Convention.

Art. 3. Il est autorisé à prendre, dans les circonstances urgentes, des mesures de défense générale extérieure et intérieure, et les arrêtés signés de la majorité de ses membres délibérant, qui ne pourront être au-dessous des deux tiers, seront exécutés sans délai par le Conseil exécutif provisoire. Il ne pourra, en aucun cas, donner des mandats d'amener ou d'arrêt, si ce n'est contre des agents d'exécution et à charge d'en rendre compte sans délai à la Convention.

Art. 4. La trésorerie nationale tiendra à la disposition du Comité de salut public jusqu'à concurrence de 100,000 livres, pour dépenses secrètes, qui seront délivrées et payées sur les ordonnances, qui seront signées comme les arrêtés.

Art. 5. Il fera chaque semaine un rapport général et par écrit de ses opérations et de la situation de la République.

Nor were they devoted to the Paris municipality.[1] Danton and Treilhard were the only ones whose careers had been in any way connected with Paris. The other members were Barère, Delmas, Bréard, Cambon, Guyton-Morveau, Delacroix, and Robert Lindet.[2]

A Committee with such extended powers appeared to theorists what Prudhomme declared it to be in his paper[3] at the

Art. 6. La Convention nommera les ministres et les généraux, et le Comité pourra présenter des candidats.	* * * de qui la trésorerie nationale est entièrement indépendante * * *	Art. 6. Il sera tenu registre de toutes les délibérations.
Art. 7. Le Comité sera renouvelé par tiers chaque mois, et les membres pourront être réélus, les deux premiers mois; ils sortiront par la voie du sort.		Art. 7. Le Comité n'est établi que pour un mois.
Art. 8. La trésorerie nationale demeurera indépendante du Comité d'exécution, et soumise à la surveillance immédiate de la Convention, suivant le mode fixé par les décrets.		Art. 8. La trésorerie nationale demeurera indépendante du Comité d'exécution, et soumise à la surveillance immédiate de la Convention, suivant le mode fixé par les décrets.

[1] In this connection see the violent attack made August 26, at the Jacobins, by Hébert and Dufourny, upon this Committee for resisting the claims of Paris to be furnished with bread at public expense. (Buchez et Roux, 28:486.) For Guyton-Morveau, cp. Arthur Young, Travels in France, 220–225, Bohn's ed.

[2] The results of the voting for members was as follows: Barère, 360 votes; Delmas, 347; Bréard, 325; Cambon, 278; Danton, 233; Jean de Bry, 227; Guyton-Morveau, 202; Treilhard, 167; Delacroix, 151. Those who stood next were: La Revellière-Lépaux, 146; Lasource, 143; Isnard, 141; R. Lindet, 122; Thuriot, 103; Dubois-Crancé, 96; Boyer-Fonfrède, 86; Merlin (de Douai). 85; Cambacérès, 62. April 7 Lindet was chosen to replace de Bry, who declined his election on account of illness.

The geographical distribution of the committee was as follows: Barère, from the department of Hautes-Pyrénées; Bréard, Charente-Inférieure; Cambon, Hérault; Danton, Paris; Delacroix, Eure-et-Loir; Delmas, Haute-Garonne; Guyton-Morveau, Côte-d'Or; Lindet, Eure; Treilhard, Seine-et-Oise.

Of these men Bréard resigned June 5, and his place was taken by T. Berlier. On this day also Couthon, Hérault-Séchelles, Mathieu, Ramel, and Saint-Just became regular members of the committee, having been added May 30 in order to present a plan for a constitution. June 12, Treilhard, who had also resigned, and Lindet, who was absent on mission, were replaced by Gasparin and Saint-André. June 22, Lindet again became a member, taking the place of Mathieu, absent on mission. June 30 Delacroix resigned.

[3] Révolutions de Paris, April 6–13; 16:73 in the collected volumes.

time, "trop semblable à une commission royale." But with the army of the north disorganized by the treason of Dumouriez, and the army of the Rhine in retreat, after leaving 22,000 men shut up in Mainz; with the frontier of the Pyrenees wholly unprotected,[1] and with an increasing area of revolt in the interior, some form of provisional government at least as strong was inevitable. It would have been a criminal waste of time longer to oppose such a step. The flaw in the constitution of the new Committee was not the extent of the powers granted, since it received no rights of arrest,[2] except against executive agents, and no control over the money power, but it was the tendency to scatter responsibility by maintaining the Executive Council as a deliberative body, while compelling the Council to carry out urgent decrees of the Committee. Since these decrees were to be signed by at least two-thirds of the members, the responsibility obviously rested with them, although the constituting law did not expressly so declare. Were this not the case the Committee would have been a political monstrosity, a sort of many-headed king, whose ministers must obey even if their obedience brought them to the scaffold. The plan of Isnard and Cambon had been perfectly clear upon this point. The ministers were to become mere administrators, and while they were to sign purely executive acts, the proposed executive committee was to be responsible for all its operations.

In the arrangement of its own work the Committee acted really like a second council, for it divided the departments among its own members, assigning foreign affairs to Barère and Danton; the correspondence, interior, and general administrative matters to Cambon, Guyton-Morveau, and Lindet; war to Delmas and Delacroix; marine to Bréard and Treilhard.[3]

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[1] Sorel, 3:373.

[2] Cp. Barère's remarks, Moniteur 16:71 (note, p. —), and Thibaudeau's, Moniteur, 23:676.

[3] April 10: Aulard, 3:182. This subdivision of work continued until June 13, when the change in the personnel of the Committee necessitated a redistribution of members and a different division of work. The original members, however, retained their special tasks, with the exception of Guyton-Morveau, who was transferred to the marine. (Aulard, 4:540.) The day before, June 12, the Convention had added "Gasparin, pour la guerre, et Jean Bon Saint-André, pour la marine," a step which suggests that it also looked upon the Committee as a ministry. In the first division

The Republic, though without a constituted government, had now a strong governing Committee. Still it remained doubtful whether this body could organize an effective administration out of the demoralized Executive Council with its agents, and the one hundred and eighty[1] almost irresponsible commissioners scattered throughout the country acting on different principles and moved by varying local conditions.

The Committee did not wait to complete its own internal organization[2] before it endeavored to inform itself, through the Council[3] and the commissioners, of the condition of the several departments of the government and the resources available. The vigor with which it pressed[4] the Council for detailed information hastened the resignation[5] of Monge, the minister of the marine, who felt that the position of chief clerk in one of his own bureaus was better suited to his powers. April 13, the Council was ordered to furnish a statement of all the decrees it had taken up to that time, and its secretary was henceforth every two days to present a note of its deliberations. Furthermore, each minister was to give a daily résumé of changes, news, orders, and executive measures belonging to his department.[6] After May 27 the Council was required to come every day "pour conférer, délibérer, arrêter avec célérité touter les mesures qui correspondent à la marche rapide des

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of work the ministry of contributions is not mentioned. The Committee advised, May 7, that this be added to the national treasury and be suppressed as a separate ministry. (Moniteur, 16:330.)

[1] Moniteur, 17:99. Cambon's report, July 11.

[2] At its first sessions two divisions of clerks were provided to facilitate correspondence with the Convention, with the generals and the ministers, and a third for the preservation of all pieces requiring the attention of the committee. (Aulard, 3:133.) April 16, a fourth division was organized to open suspected letters coming from countries with which the Republic was at war. (Aulard 3:280–281.) May 12, on account of the pressure of work, these were reorganized. (Aulard, 4:124–126.)

[3] At the time when the committee undertook to control it, the Council consisted of Clavière, minister of finances; Lebrun, minister of foreign affairs; Garat, minister of the interior; Monge, minister of marine; Bouchotte, minister of war, and Gohier, minister of justice.

[4] Aulard, 3:134, 135, 156, 157, 167.

[5] Moniteur, 16:103. Monge's place was filled, on the recommendation of the committee, by Dalbarade, a famous privateersman in the American war, and subsequently a captain in the royal navy. (Stephens, Fr. Rev., 2:319.)

[6] Aulard, 3:219.

événements." Thus developed the policy of depriving the Council of independent deliberative functions and of reducing the ministers to the position of administrators.[1]

The Committee, furthermore, did not hesitate to suspend the decrees[2] of the Council, although it had no occasion to use its power frequently, as the Council from the first took the precaution of getting its decrees approved. It also ventured to act independently, without even the knowledge of the Council, when this seemed advisable.[3]

Although appearing in such ways as these like an executive committee, it refused to consider itself accountable for the clumsiness of the old administrative machine, and especially of the war department under the control of Bouchotte. When complaint after complaint[4] of Bouchotte's culpable incapacity came from the commissioners with the armies, it found no better resource than to tell the Convention that unless the war ministry was reformed the Republic would perish.[5] At their own sessions the members called Bouchotte[6] "le ministre d'Égypte, c'est à dire statue de pierre;" and Cambon in the Convention spoke of this same ministry as "un dédale," and

[1] Aulard, 4: 343. This policy, it will be remembered, found its completion in the law of April, 1794. From the records of the Council it is apparent that no important administrative decree was taken without the sanction of the Committee, even from the first.

[2] Notably a decree adopted April 5 ordering the arrest of all Russian subjects, in retaliation for the seizure and exile to Siberia of the French representative at Varsovie. (Aulard, 3: 90, 352, 356. Cp. 211, 353.)

[3] Aulard, 4: 160, 282.

[4] For example, Aulard, 3: 415, 436, 438, 592; 4: 5, 87, 323.

[5] Bréard's words (Moniteur, 16: 475). The members of the Committee occasionally defended the Council against unjust attacks. (See Moniteur, 16: 212–213, 351, 382–383.)

[6] Moniteur, 16: 188. Mortimer-Ternaux, 7: 70, quotes from Servan, Tableau militaire de la campagne de 1793, the following letter, which, however, is totally different in manner from the Committee's ordinary correspondence:

"Les représentants du peuple composant le Comité de salut au ministère de la guerre et à ses adjoints:

"Liberté, Égalité, Fraternité.

"Allez vous faire f—! Que le diable vous confonde s'il vous faut des ordres pour donner des selles quand il a été enjoint de donner des chevaux. Faut-il aussi des ordres pour que vous donniez des brides?

"DANTON, ROBERT LINDET,
CAMBON fils aîné."

defied any living being to make "marcher cette machine."[1] The Committee tried to get rid of Bouchotte,[2] but not being fortunate in the choice of a successor his career outlasted their own. At the very end when they were blamed by Camille Desmoulins for the failures of the generals, Delacroix denied[3] that any more than a list of army promotions had ever been submitted to them. Is it not clear, then, that the interests of good government would have been better served had responsibility been definitely fixed upon the Committee itself.

While the Executive Council was nominally charged with the administration, a large part of the actual executive work was in the hands of the deputies who had been sent on missions to various parts of France to quiet domestic troubles and to direct the national defence. These Representatives on Mission, who have been compared to the Intendants of the old régime, and who made the supreme authority of the Convention felt in the management of the military and civil affairs of the Republic everywhere, were not the creation[4] of the Committee, which can not therefore be held responsible for the ordinary evils incident to such a system.

The earlier commissioners were generally governed by rules drawn up at the time they were sent out, though December 30, 1792,[5] and January 26, 1793,[6] brief decrees were adopted which were applicable to all the deputies then on mission. If such "une espèce de pouvoir exécutif de surveillance"[7] was to remain an integral part of the policy of the Convention it was obvious that the new Committee must seek to give more uniformity to the powers and duties of the commissioners and

[1] Cambon, Les réclamations, les demandes se multiplient à l'infini, et je ne comprends pas comment un seul homme peut se charger d'une pareille responsabilité. Il y a une stagnation terrible. (Moniteur, 16: 330.)

[2] May 30. June 12 General Beauharnais, an ex-noble, was nominated. His nomination barely missed becoming the subject of a protest from the commune to the Convention. (Moniteur. 16:651.) Beauharnais, however, declined. Alexandre, "commissaire des guerres," was nominated with hesitation, June 22. (Moniteur, 16: 712–713.) This nomination was finally rejected, 720.

[3] Moniteur, 17: 93.

[4] The Constituent and Legislative Assemblies created the system, granting as full powers as the Convention imitating them, ever did. See decrees in Aulard, 1: Intro. LV seq., LX seq.

[5] Aulard, 1: 370.

[6] Aulard, 2: 15.

[7] Cambon's report, July 11, Moniteur, 17: 99.

to reorganize them in such a way as to gain a measure of control over them. It did not hesitate to begin this work two days after its own appointment by obtaining a decree that commissioners should correspond daily with it, independently of their letters to the Convention.[1] They were, moreover, to send as soon as the facts could be gathered a complete statement of the material resources of the country. The next day the Committee went further and submitted a plan for reorganizing the deputations, according to which there were to be three commissioners with each army. Their powers were unlimited for the exercise of the functions delegated to them;[2] that is, the reorganization of the armies, the surveillance of the generals, and the local administration of the war department. Beyond the privilege of appeal to the Convention, military and civil agents were subject to the orders of the deputies, whose decrees were, however, provisional until approved by the Convention. There was nothing in this law to indicate a change of policy except, perhaps, the clause which provided that the deputations were to be renewed by thirds each month. It is noticeable, also, that these new deputies received no explicit authority to interfere with local administrations. In one point the law was less carefully drawn than that of April 4 upon the mission to the army of the north and the Ardennes, for that law prescribed[3] that all deliberations should be taken in common.

The deputies selected to form these reorganized missions were already[4] in the regions to which they were again assigned. With a few exceptions they were not extremists in their character or methods of action, although the majority of them belonged to the Left. Billaud-Varenne, later a member of the Great Committee, was the only one among them whose letters plainly foreshadow the gloomy fanaticism that was to preside over France.

At about the time this proposal became a law the Convention, at the suggestion of the Committee, recalled all deputies

[1] Aulard, 3: 158.

[2] Aulard, 3: 172. This qualifying clause was added by the Convention. (Procès-verbal, 9: 179.) Undoubtedly the Committee had such a limitation in its mind.

[3] Aulard, 3: 63

[4] Aulard, 3: 213, note 1, on the authority of Journal de Débats et Décrets, no. 207, pp. 203–204. It is easy to verify the statement by a comparison of the list with previous lists, in Aulard. This list was decreed April 12.

from departments where there were no longer any disturbances.[1] While this did not immediately lead to the return of a great many, it shows that the Committee, in perfecting the organization of its work, intended to employ extraordinary means only where such means were indispensable. The same purpose appears in the comprehensive scheme completed at the end of April and approved by the Convention.

It was the arrangement of the Republican military forces into eleven distinct armies which furnished this opportunity to further develop and control the commission system. The new law[2] was based upon the law of April 9, but it more carefully defined and guarded the functions of the commissioners. In one point the Convention still further limited the powers proposed, for the Committee had recommended that the deputies should have the right to deprive military agents of their offices, instead of merely suspending them. Probably in this matter the Committee acted under the impulse which led the Convention, April 4, to give such extreme powers to its representatives with the armies of the north and the Ardennes.[3] The important features of the law of April 30 were the division of each deputation into two parts, one to have charge of camps and cantonments, the other to care for stores and fortifications; the requirement that at least two commissioners must authorize all legal acts; the dispatch of a daily journal[4] of operations to the Committee, with at least one letter a week to the Convention, and the renewal of each deputation by halves every month, together with the revocation of the powers of all deputies not reappointed under the new law.

[1] Letter of Saladin and Pocholle, Aulard, 3: 315. See also Cambon's report, Moniteur, 17: 99.

[2] Aulard, 3: 533–544.

[3] Aulard, 3: 64. Cp. the law of December 30, 1792, 1: 370–371. Bellegarde, Cochon, and Courtois, representatives with the army of the north, decreed the deprivation of General Fournier May 3, before they were notified of the new law of April 30. When the letter to the Convention bringing the news of the deprivation was read it caused a commotion, because it was thought the representatives had exceeded their powers. The Committee accordingly wrote the representatives a sharp letter. (See the letters, Aulard, 4: 165, 166, 299, 300. Cp., 372.)

[4] Aulard, 3: 537–538. Art. 20. "* * * ils seront tenus d'adresser chaque jour au Comité de salut public le journal de leurs opérations, copies de leurs arrêtés et proclamations, et de tous les états de revue et d'approvisionnement qu'ils auront fait dresser * * *."

The law also provided that, to give unity to the labors of the commissioners, they should receive instructions from the Committee. Accordingly, the Committee drew up an elaborate "Plan de travail,"[1] which serves as an authoritative interpretation of the law. A review of this more properly belongs to a discussion of the Committee's policy than to a brief sketch of its organization. But one point must be referred to, because it called attention to an article of the law which had not been noticed before, and led to an acrimonious attack in the Convention on the Committee's scheme. It also makes clearer the Committee's use of the commission system. This objectionable feature was a proposed "comité central de correspondance, composé de citoyens instruits et zélés choisis parmi les membres des administrations de département, des districts, des conseils généraux des communes, des sociétés populaires, et des bons citoyens."[2] The comité central was to take no legal acts, but simply to correspond with the commissioners, informing them in detail of all facts which would throw light upon the condition and resources of the region where they were. If efficient agents of the Executive Council were at hand they were to be given the preference in its formation. When the Plan de travail was presented to the Convention[3] Genissieux cried out, "Je crois qu'au moment où vous aurez approuvé ces instructions, il ne vous restera plus qu'à vous retirer, car vous n'aurez plus rien à faire." That the members of the committee might be selected from the popular societies was seemingly what alarmed Genissieux,[4] and he was supported by Barbaroux

[1] Aulard, 4: 23–43.

[2] Aulard, 4: 38.

[3] For the whole debate, see Moniteur, 16: 327, 328, 331, 332.

[4] He said: "Je ne conçois rien à ce comité central, composé de membres de sociétés populaires." [Plusieurs voix: "C'est ce qui vous effraie!"] (Moniteur, 15: 327.) It is interesting to observe that the propositions concerning the manner of selecting this central committee made by Barbaroux and Lasource were similar to the scheme actually carried out by the commissioners to the army of the Moselle. In a letter to the Convention dated Metz, May 29, they wrote: "Nous avons cru que nous devions l'environner de toute la confiance publique, en laissant au peuple lui-même le soin de désigner ceux qui doivent le composer; les corps administratifs et judiciaires ont été assemblés, tous ont connu nos intentions; ils se sont réunis dans la société populaire pour discuter le meilleur mode à employer dans l'organisation de ce comité," etc. (Aulard, 4: 375.) This suggests that the fears of the Girondins were not well directed. The real danger lay in the character of the commissioners, not in such devices as this central

and Lasource, who tried to make such a selection impossible or to guard it carefully. In introducing this feature into their general plan the Committee was acting in good faith, as plainly appears from a letter written at the time to Tallien, who, on account of the fear that the rebels would capture Chinon and overrun the department of Indre-et-Loire, had caused the organization of an executive central commission, composed of the members of all the constituted authorities of that department. This scheme seemed to the Committee a perversion of its plan, and therefore it drew up a letter to him, "pour l'inviter à faire saisir l'intention de la Convention nationale sur la formation des comités de correspondance qui ne doivent pas être des comités de départements, mais comités formés * * * pour leur [commissioners] procurer les instructions et les renseignements qui leur sont nécessaires * * *."[1]

The choice of deputies made to work under the new law seems to have been dictated by the same principles as the choice of April 12. Of the sixty-four members of the delegation, two-thirds were already on mission to the regions to which they were now assigned. Of the remainder, several, like Dubois-Crancé, the two Prieurs, and Alquier, were experienced commissioners, generally familiar with their new localities. Sallengros, Gauthier, and Gillet had been officials in their assigned spheres of work. Milhaud was a military officer who was to win distinction as a cavalry leader under Napoleon. Only eight of the sixty-four were chosen for reasons which are not obvious at a glance.

The delegation of April 30 was the last important change in the delegations during the time when the first Committee was in control. May 10, eight representatives, who were known and respected in the disturbed sections of the west, proposed[2]

committee, which had no powers. Of course if the Convention sent out despotic men they could turn even the most innocent institutions into means of tyranny.

[1] Aulard, 4: 138. For Tallien's letters, see 61, 62, 89, 153, 210, 211, 369. Tallien's scheme was later approved, for it was seen to be a plan to meet a peculiar local exigency.

[2] Aulard, 4: 85, 86, 257. Cp. letter of the Committee June 28, Mortimer-Ternaux, 8: notes, pp. 574–575. M. Aulard concludes from the fact that Delaunay and Dandenac do not appear in the decree that they were not named, as would be inferred from the record in the Moniteur and the Journal des Débats et des Décrets. But both Delaunay and Dandenac sent letters from Saumur and Tours in connection with the missions there. (For example, see letter of May 28, Aulard, 4:362.)

to go and use their influence in quieting the troubles. Obviously there were advantages and disadvantages connected with the plan of using men as commissioners in their own departments. Thibaudeau,[1] one of this delegation, thought afterwards it would have been better to have sent strangers, for, said he, "Nous courions le risque de nous trouver à chaque instant placés entre nos devoirs et nos affections." Two months later the Convention itself came to distrust this policy, for it decreed[2] that no deputy from a department toward which a delegation was sent could be a member of it. Whether the policy was wise or foolish, the fact that the Committee was largely influenced by it proves its honesty in the use of so dangerous an instrument of supreme authority.

The scheme which the Committee had devised guarded the supremacy of the Convention and its own leadership by providing that the functions of all deputies not reappointed were revoked, and that each deputation was to be renewed every month. Unfortunately these important provisions remained in many cases a dead letter, so that in certain sections of the country there came to be a clashing of rival commissions injurious to the effective administration of affairs. This was especially true of the west. With the army of the coasts of Rochelle there remained, contrary to law, at least four commissioners, one of whom had been sent out as early as January 21. Another of these four, Tallien,[3] declared frankly his reasons for not returning to the Convention. May 6 he wrote from Tours, "Un décret a retiré mes pouvoirs; mais le danger public, l'intérêt du peuple m'en ont donné de nouveaux." Such considerations seem to have led the Committee to allow infractions of the decree, and so reorganization was in a measure defeated at the outset. When the time came for the first renewal of the deputations the power of the Convention and of the Committee was thoroughly shaken by the insurrection of May 31–June 2. Nothing was therefore done about renewal until June 19[4] and 20.[5] On June 20, also, the Convention

[1] Thibaudeau, Mém. 1:24 seq.

[2] The decree was, however, suspended, and M. Aulard thinks it had no further consequence. (Aulard, 5:184.)

[3] Aulard, 4:6. Cp. 3:316. The others were Niou, whose commission dated as far back as January 21; Richard and Goupilleau were sent out April 12.

[4] Aulard, 5:3.

[5] Aulard, 5:23.

ordered[1] that the law of April 30 upon this point be executed. Even the commissioners themselves sometimes reproached the committee for not carrying out the decree. Albitte wrote from Grenoble, June 24, "La loi nous rapellait au bout d'un mois, et nous restons à trois."[2]

The nature of the authority given the Representatives on Mission was such that it became necessary to regulate their relations to the local administrations and the generals. Although the Committee asked the Convention that representatives might have the power to deprive public functionaries, a power which the Convention limited to suspension,[3] it showed itself anxious[4] that administrative bodies, even the least important, should not be disorganized, whatever changes in them the commissioners felt obliged to introduce. Moreover, if the action of their predecessors in the fall of 1792 be studied, it will be observed that the Committee, while repeatedly reminding their representatives of their unlimited powers,[5] acted according to the policy of the Convention, moderating it rather than emphasizing it.

The ability of the Committee to manage[6] successfully the system met its severest test in the attempt by means of it to control the armies of the Republic. From one point of view the Committee was successful, and even Von Sybel[7] acknowledges this. Had it not been for its preliminary work and that of its commissioners, from April to July, certainly Carnot could not so readily have "organized victory." It was with a conviction of this truth that the members wrote to the deputies with the army of the north, May 28: "Vous êtes à l'armée un conseil d'état; vos fonctions consistent à placer à côté du général et de l'armée tous les moyens nécessaires pour assurer le succès des opérations militaires, pour d ispenser du recours

[1] Aulard, 5: 28.

[2] Aulard, 5: 75.

[3] See letter of the Committee. (Aulard, 4: 372.)

[4] See circular of May 8 (Aulard, 4: 59). Cp. decree of the committee (4: 21).

[5] For example, Aulard, 3: 426, 451, 472, 488. Here is a specimen: "Au surplus, nous vous répétons que vos pouvoirs sont illimités et que tous les moyens sont bons s'ils contribuent à sauver la chose publique" (472).

[6] Representatives occasionally complained that they were not effectively supported by the Committee. Cp. Albitte's letter, Aulard, 5: 75.

[7] Von Sybel, 2: 308.

à la Convention nationale dans tout ce qui exige de la célérité,"[1] etc. There was another phase to the matter, however, and in fact these stirring words were written to representatives who were offended at the Committee for having criticised their treatment of the generals,[2] in particular their interference in military operations. In the first days of its career it was inclined to urge the representatives to special watchfulness in regard to men like Custine and Kellerman,[3] whose connection with Dumouriez was doubtful, but as the fears of active treason subsided it reminded the deputies that they should appear to the generals as "citoyens investis de grands pouvoirs pour les seconder puissamment."[4] "Il est nécessaire qu'un général," added the Committee, "soit investi d'une grande confiance, qu'il en ait le sentiment et la conviction; il faut qu'il ait une grande liberté, une grande indépendance, si l'on veut qu'il conçoive de grands desseins et d'heureux plans." This independence was especially an independence from all meddling with the generals' plans of campaign.

The policy of the Committee is therefore clear.[5] Unfortunately the first opportunity to carry out that policy on an occasion of great importance came late in its career, when several new members of a more radical cast of mind had entered it and two of its original members had resigned. The case, however, is a good one, and shows also how serious was the failure to carry out the plans of April 30 in regard to the army of the coasts of Rochelle. By the time the trouble began early in June instead of six representatives, as planned, there were twenty or twenty-one. The commissions of four of these, as has been said, antedated the law of April 30 and were strictly invalid. These multiplying representatives were located in four places: La Rochelle, Poitiers, Niort, and Tours, the principal men at Tours coming from Saumur upon its capture by the rebels. Thibaudeau, who was at Poitiers, says these twenty commissioners "ne pouvaient pas s'accorder. Ils avaient transporté en face d'un ennemi qui était très-uni les fatales

[1] Aulard, 4:357.

[2] Letter of Gasparin, Aulard, 4·291.

[3] April 16, Aulard, 3:285–286. [4] April 19, Aulard, 3:331–332.

[4] Plan de travail, Aulard, 4:25 seq. Cp. 356.

[5] July 4 Chabot accused the Committee of keeping Servan at the head of an army, though his arrest had been ordered by commissioners. (Moniteur, 17:46.)

discussions qui déchiraient la Convention."[1] When Biron assumed command of the army the commissioners at Niort supported him, while those at Saumur and later at Tours treated him with distrust, and finally undertook to draw up in councils of war a plan of campaign which they submitted to him with a badly disguised demand for its adoption. The commissioners at Niort, June 20, the day after the second council, in writing the Committee, applauded the attempts of Biron to neutralize "les funestes conséquences qui pourraient résulter de l'exécution de ce plan,"[2] probably referring to the council of June 11. Evidently, with one set of representatives supporting him and another requiring[3] him to carry out plans he disbelieved in, "le métier de général est devenu impossible," as Biron had written[4] to the Committee a few days before. Biron accordingly resigned. The matter came before the Committee June 28 and met a prompt and vigorous treatment. According to its record[5] the members believed the council of war had not left Biron any "liberté de déliberer sur les mesures adoptées." The Committee therefore declared Biron invested with the nation's confidence and free to direct "sans influence secrète ou publique toutes les opérations militaires." Ronsin, the assistant minister of war, and the executive commissioners present at the second council were to be recalled and several of the representatives whose time had expired were asked to return at once. The same day a letter[6] was written to Biron urging him to withdraw his resignation, excusing the action of the representatives on the ground that the deputations were isolated and disorganized, and reminding him of the confidence and consideration with which the Convention, as proved by the "Plan de travail" of May 7, wished to surround the gen-

[1] Thibaudeau, 1:26.

[2] Aulard, 5:91.

[3] Aulard, 5:105. "Sur l'avis de l'évacuation de Saumur par les rebelles et de leur projet de marcher sur Nantes, ils ont requis le général Biron de se mettre à la tête de l'armée," etc. This is M. Aulard's abstract of the letter of Choudieu and others, June 27, to the Committee. Two or three days later Choudieu appeared before the Committee and declared that the council of war had had no intention "influencer la détermination du général en chef," but only to engage him to decide promptly. (Aulard, 5: 139.) Choudieu's memory evidently put no strain upon his conscience.

[4] Mortimer-Ternaux, 8: notes, pp. 565–566; letter.

[5] Aulard, 5:111–113.

[6] Mortimer-Ternaux, 8: notes, pp. 574–575; letter.

erals. Unfortunately Choudieu and some of the other compromised representatives reached Paris at this time. On the 29th Delacroix and Delmas were assigned to hear their story. They demanded the papers sent on by Biron and a copy of the decree of the 28th. Probably taking advantage of the distrust felt toward the original members of the Committee, and enlarging on the dilatoriness of Biron, they succeeded in bringing the necessary pressure to bear on the Committee. At all events the Committee learned so much in two days that it quite revoked its previous decree, accepting the assertion of Choudieu that there had been no intention of more than hastening a decision from Biron. Even Ronsin was affirmed to be a useful man in the army.[1] But it stood by Biron to the extent of again indorsing his plan of campaign.[2] This practical defeat had consequences fatal to Biron, as is well known, for it exposed him to the attacks of his enemies, now bitterer than ever. The Committee was not, however, to stain its career with the final steps of his ruin.

Before the Biron trouble the Committee had realized the chaos that reigned in the deputation, and had reduced the number of commissioners to ten[3]. This was too late to avoid the difficulty. Moreover, the anti-Biron deputies were in general retained, though probably not intentionally. To inform itself further, Gasparin, one of the new members, was sent to the region June 26, but he returned after the incident was closed.

From this sketch of the attempt to reorganize and direct the system of representatives on mission it is apparent that here, as in the case of the effort to control and push forward the work of the executive council, the Committee was only partially successful. This is not surprising if it be remembered that the three months of the Committee's career were passed in the midst of one of the most violent struggles of the whole revolutionary period. But its plans were wisely conceived. Its own constitution had been due to an imperious necessity. Circumstances beyond the control of the revolutionary leaders drove them back from the decentralizing institutions of 1789 toward the stronger government of the old régime. Nevertheless, the

[1] See Thibaudeau's description of Ronsin's value, Mém., 1:27.

[2] Aulard, 5:139–141. Cp. letter to Biron, Mortimer-Ternaux, 8:578–579.

[3] June 20: Decision of the Committee. June 22: Decree of the Convention (Aulard, 5:23, 49).

Committee was no engine of tyranny, but as its name indicated a means of safety. It endeavored to fix a rallying point for the energies of the Republic. To this end, while using the revolutionary instruments which had been thrust into its hands, it sought to guard the local liberties granted by the Constituent Assembly from danger and to protect the generals from an undue interference with military operations.

XVI.—THE QUEBEC ACT AND THE AMERICAN REVOLUTION.

By VICTOR COFFIN.

The conclusions of the present paper are drawn from a somewhat extended investigation into the introduction of English rule into French Canada, 1760–1774[1]. They seem to be appropriate for use on this occasion because of the belief induced by that investigation that the place held by Canada in the early Revolutionary history is in our day much underrated, and has at all times been much misunderstood. One of the earliest expressions of the misconception I speak of is found in the Declaration of Independence; the latest that I have met is put forward with much emphasis by the reviewer of Professor Eggleston's Life of John Patterson, in the New York Nation of July 11 last. The reviewer asserts that from its conquest in 1760 Canada was regarded by the British ministry as a point d'appui "for the support of the ministerial policy in asserting British parliamentary supremacy over the colonies;" and that this position was expressed and intensified by the Quebec act of 1774, "which had for its object, as the Continental Congress charged, to substitute the institutes of French customary law for the common law of England, and thereby to make Canadians proper instruments for assisting in the oppression of such as differ from them in modes of government and faith." The first part of this statement my limited time compels me to leave with the remark that an examination of the pamphlet and other party literature, and of the diplomatic and parliamentary proceedings during the last years of the war and at the peace of 1763, will show it to be thoroughly mistaken. As

[1] The result of this investigation will be found at length in the Bulletin of the University of Wisconsin, History and Political Science Series (1895), under title, The Province of Quebec, 1763–1775. A more extended form of the present paper, with references, was published in the Yale Review for August, 1895.

to the latter part, the reviewer simply restates the accepted tradition; namely, that the character of the relations between the colonies and the mother country led in 1774 to the joining with the acts for the punishment of the Province of Massachusetts Bay, an act (the Quebec act) designed to continue to the Canadians the despotic system of government under which they had grown up, and thus to pave the way for using them as docile instruments in the extinguishing of the liberties of the other colonies. In this view this act is denounced in the Declaration of Independence as "abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule in these colonies."

In giving the reasons for my entire dissent from these emphatic opinions I must speak in the briefest manner, and only of the most prominent points. We have these three features of the Quebec act to consider: (1) The substitution of French for English law; (2) the withholding of the representative institutions which existed in the other provinces; (3) the great territorial extension of the province. And in expressing my belief that these provisions were not due to, or intended to affect, the condition of affairs in the other provinces, I must not be understood as denying the arbitrary and tyrannical spirit of the administration by which they were enacted, nor the fact that that administration was at the moment largely inspired by hostility to the free spirit of American self-government. Its animus is sufficiently seen in the other American acts of the same session; my object is simply to show that, in spite of appearances, it was not guilty of the more far-reaching and treacherous attack on liberty imputed to it on account of the Canadian measure. The Quebec act was founded on misconception and false information, and is one of the most disastrous measures in English colonial history; but a close examination of its genesis has convinced me that it was the result of an earnest and comparatively generous effort for the welfare of the French Canadians, and that it was not to any appreciable degree affected by tyrannical ideas in regard either to them or to the rest of America.

And first, as to the change in civil laws. It will be remembered that in October, 1763, a royal proclamation was issued for the purpose of establishing civil government in the newly

acquired Provinces of Quebec, Granada, East and West Florida. This proclamation was then, and has been since, understood as subverting in Canada the whole system of French law and administration; and in this view Bancroft denounces it as an act of extreme tyranny, declaring that "the history of the world furnishes no instance of so rash injustice."[1] Lord Mansfield, on the other hand, in his famous Granada decision of 1774 refers to the proclamation as an irrevocable charter of liberties granted to all who did then or might hereafter reside in the regions in question; on the ground that the King had thereby divested himself of his direct legislative authority, and given solemn promises of the establishment of English law and representative institutions. It is clear that if the Quebec act, which undid the work of the proclamation in Canada, showed on this point the designs attributed to it, these designs could not have animated the royal breast in 1763. The promises of the proclamation were, however, not fulfilled in Canada inregard to representative institutions, and government remained on this insecure basis until 1774. During this whole period the official correspondence and reports are largely occupied with representations as to the disastrous state of things that exists in consequence of this delay and uncertainty, and with urgent adjurations to hasten the settling of the constitution. It was found impossible to put English civil law into practice except in commercial matters; and as a matter of fact there can be little doubt that the great body of the French customary law continued undisturbed. Consequently the Quebec act did not "substitute" this law for the "abolished" English; it merely removed all doubt as to which should be the basis of the permanent code. And that doubt was removed, as far as those in authority were concerned, long before the year 1774; for an examination of the official correspondence shows that the return to the French law was largely resolved on as early as 1767. Down to 1766 the colonial officials were evidently under the impression that the home government aimed to fulfill the promises of the proclamation by thoroughly assimilating the province to the English form of the other colonies. But in that year Murray was superseded by Carleton as governor; and the latter came to his duties believing, if not officially

[1] And yet in the measures taken fourteen years later to redress this supposed injustice he and others can see nothing but a reaching after "unmixed arbitrary rule."

instructed, that the ministry was inclined to restore the French civil law. Murray had already strongly urged this course, and from the very first Carleton does not cease to impress upon the home Government its justice and desirability. We find among the state papers of this year (1766) a report of the Crown lawyers, which speaks of the disorder occasioned in the Province of Quebec in consequence of the idea that it was intended "to abolish all the usages and customs of Canada," and urges that it "would be oppressive" hastily to disturb the "local usages and customs" in regard to real property. In June, 1767, we find Shelburne, the secretary of state, writing to Governor Carleton that the affairs of the province are under serious consideration, the main problem being "how far it is practicable and convenient to blend the English and the French laws;" and in August of the same year the privy council, resolving, on consideration of reports from the board of trade, that fuller information was desirable ("it being unwise and dangerous to frame or reform laws in the dark"), orders a thorough preliminary investigation. In December, Carleton sends home a draft of a proposed ordinance for continuing the French laws in regard to land property; and Hillsborough, who had succeeded Shelburne as secretary, replies, March, 1768, that it is approved of, but that for the present it is to be held in reserve pending a general settlement. We thus see that at least six years before the Quebec act the home Government, apparently uninfluenced by anything except representations as to the state of the province, had resolved to go almost as far as that act went in regard to the system of laws. The investigation ordered was at once entered upon, and the information collected was put into the hands of the Crown lawyers (Thurlow, Wedderbourne, and Marriot), with orders to make exhaustive reports and recommendations. These were delayed from various causes, and it was not until 1774 that this much deliberated matter was ready to be legislated upon. The Quebec act was unquestionably founded upon these able reports of the Crown lawyers; and we can not read them without being convinced that they were almost entirely inspired by a sincere and generous, if somewhat mistaken, concern for the best interests of the province.

Next, let us consider the withholding of representative institutions. It was on this ground, I think, that was mainly based the opinion (not unreasonable, considering contemporary

events), prevailing throughout the old colonies that the constitution given to the Province of Quebec was the herald of a direct attack on old-established liberties. And I admit that on first view there would seem to be little question, apart from direct evidence, that the state of feeling in England in regard to American assemblies did influence the ministerial mind in this matter. It surely was to be expected. But even if there were an unwillingness to establish another such assembly until the difficulties with the existing ones had been somewhat appeased, we can scarcely regard such caution as indicative of a deep-laid and systematic attack on the institution. The facts show that there could have been no such intention. The first reference to the matter is on September 2, 1765, when we find the board of trade reporting to the privy council that the "situation and circumstances of the colony (Canada) have not hitherto been thought to admit of a house of assembly," but that the only obstacle they can find is the difficulty in regard to admitting Catholics as members. No further mention is made of this, and the next important official document is the report of Canadian affairs by Solicitor-General Wedderbourne, December, 1772, which sets forth very clearly the main reasons for withholding an assembly. He contends that it is at present wholly inexpedient to form one in Canada on account of the peculiar difficulties presented by the religion of the great mass of the inhabitants. These difficulties he points out very forcibly, and advises instead of an assembly the form of government by a large appointed council that was actually established by the Quebec act. For the public attitude of the ministry in this matter we may go to the debate in the Commons on the Quebec act itself. The main impression which a study of this spirited and protracted discussion leaves with us as to the point is that the opposition were very careful not to press for an immediate assembly, and that the ministry were very careful to defend their withholding it purely on the grounds: (1) That it would be unjust to exclude the French Roman Catholic majority, and (2) that it would be unsafe to admit it. Attorney-General Thurlow asserted without contradiction that no one had claimed that it was at present fit to give an assembly to Canada; and Fox admitted that he would not explicitly state that such a step was then expedient. Lord Beauchamp, a Government supporter, affirmed that no member had advocated the appointment of a council because of the conduct of

the popular assemblies in America, or had ventured to say that an assembly would be always advisable. It is evident on the whole that the opposition could not offer a solution of the difficulties that lay in the way, and that the Government, whatever secret motives may have influenced it, was quite able to defend its position by pointing to these difficulties. It would be more correct to say, however, that the Quebec act deferred than that it denied an assembly, for the words are "whereas it is at present inexpedient." There was not at any time any serious consideration of the permanent refusal to the Canadians of representative institutions; and the last word on the subject in the Quebec act debate was the following from Lord North:

> That it is desirable to give the Canadians a constitution in every respect like the constitution of Great Britain, I will not say; but I earnestly hope that they will, in the course of time, enjoy as much of our laws and as much of our constitution as may be beneficial to that country and safe for this. But that time has not yet come.

The ministry in short were encouraged to delay representative institutions because they were assured by the colonial officials that the great body of the French Canadian people had no desire for them, and could safely, and perhaps beneficially, be left without them for a few years to come; but there is no evidence to show that this delay was intended as the first step of a system of oppression which was ultimately to be extended to the other colonies through the instrumentality of the docile slaves that had been secured in Canada.

Lastly, as to the subject of the territorial extension of the province. This I had hoped to take up more thoroughly; but I must be content with pointing out the line of argument. The Province of Quebec was confined in 1764 (against the remonstrances of its inhabitants), and extended in 1774, not through invidious designs against the other colonies, but mainly, if not entirely, from consideration connected solely with the Indians and the fur trade. The importance of this trade in British eyes at the time need not be dwelt upon, and it will be readily seen that the general relations with the savages depended upon it and upon the treatment of the Indian territories. It can be clearly established that the steadily increasing anarchical character of the conditions in these regions had by 1774 convinced the authorities that they should be annexed to some one civil government; and having reached this conclusion it was inevitable that there should be chosen for this

purpose the province to which the region, or the most of it, was believed to have belonged, from which it could be governed most easily and which was most directly under imperial control.

From the above examination we must at least conclude that if the Quebec act was dictated by hostility to the growth and liberty of the other colonies, its authors took unusual pains to keep its real purpose hidden. But why should such concealment have been thought necessary? This same government had just carried through three bills of the most stringent and repressive nature, striking, to the popular view, heavier blows at American freedom and growth than anything contained in the Quebec act; and in these measures it had found itself backed by a consistent and overwhelming support, both in Parliament and in the country. Why should it now have scrupled to say that it was also taking measures of precaution in Canada? The government of that day was not an enlightened one, and would have been well content to secure popular support without looking to the future; and it might well have concluded that the preserving of the fur trade and the vast regions of the West from the encroachments of the rebellious colonies would have proved a popular measure. Rather than concealed, indeed, we should expect to see this feature, if occupying a prominent position in the ministerial mind, put forward with prominence. We should expect it to have been used to explain and defend before a bigoted public that apparent establishment of the popish worship which so aroused the horror of the Continental Congress, and which was as unpopular in England as in America. I have spoken above of the act as one of the most disastrous in English colonial history. It was not popular in England; it was detested in America; it was not called for or welcomed by the Canadians; it was as useless at the time as it has since proved injurious. And if I had not already exceeded my time I should like to give reasons for believing that the religious provisions of the act had very little real influence in Canada, and that the ill-timed intolerance of the Continental Congress had comparatively little to do with the ill success of the invasions of 1775–76. Canada was preserved to Great Britain not through the Quebec act, but in spite of it. The controlling forces at this critical point in the history of North America were the mismanagement of the Revolutionary cause and the vigor and ability of the British leaders.

XVII.—THE HISTORICAL ARCHIVES OF THE DEPARTMENT OF STATE.

By ANDREW HUSSEY ALLEN, Chief of the Bureau of Rolls and Library.

The historical archives deposited in the Department of State, by several acts of Congress, for preservation, and presumably with the purpose of ultimate publication, are regarded without material divergence of intelligent opinion as the most valuable collection of documents extant upon the early political history of the nation. But a lack of popular knowledge touching their volume, value, condition, and accessibility has within a few years by persistent fostering been developed into a serious misconception of the Department's purposes respecting their uses—a misconception which finally appeared last year in a public statement of the nature of an assault upon the Department by a prominent member of this association (formerly its president), untimely, unjustified, and further confusing the situation. The purpose of this paper, within the brief time and space allotted, is, at this, the earliest opportunity, to correct this misapprehension, so far as possible, first, by a statement of facts in contradiction, and secondly, by such assurances as incidental comment may convey.

These archives are virtually held in trust by the Department for the use of historical writers and students, and it is their devotion to that use with which their custodians are concerned.

The collections comprise:

(1) The records and papers of the Continental Congress, in 307 volumes, folio, deposited in the custody of the Secretary of State by the acts of Congress of July 27, 1789, and September 15, 1789, entitled, respectively, "An act for establishing an Executive Department, to be denominated the Department of Foreign Affairs," and "An act to provide for the safe-keeping of the acts, records, and seal of the United States, and for other purposes."

(2) The papers of George Washington, in 336[1] volumes, folio, bought by authority of the acts of June 30, 1834, and March 3, 1849, entitled, respectively, "An act to enable the Secretary of State to purchase the papers and books of General Washington," and "An act making appropriations for the civil and diplomatic expenses of Government," etc. Both acts direct "the said books and papers to be deposited and preserved in the Department of State." The former of these two acts appropriates $25,000 and the latter $20,000, making the total cost of the Washington papers $45,000.

(3) The papers of James Madison, in 75 volumes, quarto (new binding), bought under the act of May 31, 1848, entitled "An act to provide for the purchase of the manuscript papers of the late James Madison, former President of the United States." This act appropriates for its purpose $25,000, and provides for the "delivery" of the papers "to the Secretary of State, with a proper conveyance of title to the United States."

(4) The papers of Thomas Jefferson, in 137 volumes, quarto, bought at a cost of $20,000, appropriated by the act of August 12, 1848, entitled "An act making appropriations for the civil and diplomatic expenses of Government," etc. This act contains the proviso "That the said T. J. Randolph shall deposit all the said papers and manuscripts of a public nature in the State Department, and execute a conveyance thereof to the United States," and carries an appropriation of $6,000 for the publication of the papers.

(5) The papers of Alexander Hamilton, in 65 volumes, folio, bought by authority of the act of August 12, 1848, just cited, under the same conditions as those governing the purchase of the Jefferson collection, at a cost of $20,000, and to be published at an expenditure of $6,000, also provided.

(6) The papers of James Monroe, in 22 volumes, quarto (new binding), bought at a cost of $20,000 under the act of March 3, 1849, which provided for the purchase of the second part of the Washington Papers, and for these papers, in this language: "And that a like sum be appropriated for the purchase of the manuscript books and papers of the late James Monroe, to be deposited in like manner in the Department."

[1] Of this collection, 37 volumes, known as the "Army Returns," were transferred to the War Department November 24, 1894, under the act of Congress of August 18, 1894.

(7) The papers of Benjamin Franklin, in 32 volumes, quarto (new binding), bought at a cost of $35,000 by authority of the act of August 7, 1882, entitled "An act making appropriations for sundry civil expenses of the Government," etc., which contained the following provision:

To enable the Secretary of State to purchase the manuscript papers of Benjamin Franklin, and the collection of books, and so forth, known as the Franklin collection, belonging to Henry Stevens of London, thirty-five thousand dollars; the printed books, pamphlets, and newspapers, and one of the typewriter copies of the manuscripts to be deposited in the Library of Congress, and the residue to be preserved in the Department of State.

The Government of the United States has, as it appears, expended $165,000 in the acquisition of the papers of these six commanding figures in its history—papers that are, of course, priceless from the view point of the historian. And yet these six collections compared with the collected papers of the Continental Congress—"the great committee on the conduct of the war"—are far overshadowed in importance and more than half equaled in volume.

The papers came to the Department in various stages of preservation, incompleteness, and dilapidation.

The collection of Franklin only was received after careful restoration and binding. His papers had been collected and arranged by Henry Stevens, of Vermont, a resident of London, and an archivist of experience and accomplishment, whose methods have formed the Department's model for later work on the same lines.

The condition of a part, at least, of the Washington Papers was more precarious than that of any other collection, while the Jeffersons were the best preserved.

The secretary of the American Historical Association, in his report of the proceedings of the ninth annual meeting held at Chicago, in 1893, quotes this paragraph from Mr. W. F. Poole's report of the same meeting, published in the Independent:

The historical papers in the State Department are not accessible to the historical student except as a special favor, and they are not arranged, classified, and calendared. The State Department has no space for historical archives and no archivist who understands their management or has time to give to the needs of historical investigators. Indeed these are not the functions of the State Department. At Ottawa, however, Canada has a department of archives; it is an excellent one, and under the

charge of a most competent archivist. American historians, when they need to consult the original documents relating to our own history, often go to Ottawa to see papers which should be in Washington.

These few sentences present the case with compactness and comprehensiveness; their authorship is respectable, and they bear the official indorsement of this association.

"The historical papers in the State Department," says the report, "are not accessible to the historical student except as a special favor, and they are not arranged, classified, and calendared."

About the time at which that statement was made the division of the Department charged with the custody of these archives was engaged in completing the restoration, arrangement, and binding of the Madison Papers, to render them freely accessible, and in liberalizing, so far as practicable, the regulations governing the use of the several collections by investigators. The restoration, arrangement, and binding of the Monroe collection had been completed and a calendar of the papers contained in it had been in print and distributed within the limit of the edition since 1890–91.

There were in the Bureau of Rolls and Library at the same time, besides earlier indexes, a completed calendar in manuscript of the Madison Papers which, printed, comprises 739 imperial octavo pages, or about 9,000 entries in small type; a completed calendar of the Jefferson collection of twice the volume of the Madison calendar, and a partially completed index of the Jefferson Papers still in progress which, when finished, will equal in extent the calendar of the latter collection.

These calendars were the work of Mr. Walter Manton, of the rolls division, prosecuted with an intelligent industry and devotion that runs no risk of being overestimated, while their compiler found time to answer many hundreds of letters involving long and careful searches in the Revolutionary archives for information of individual military services sought by candidates for admission to the various Revolutionary societies lately organized. Early in the year 1893 an index of the papers of the Continental Congress was begun, and it has since been continued. The papers selected for the inauguration of this index were those described as "letters alphabetical," a series to the contents of which little, if any, clew existed.

Prior to the summer of 1893 the privilege of personal access to the archives had been accorded to several historical students of eminence, as the History of the Administrations of Jefferson and Madison and the publication by the Putnams of the Franklin, Hamilton, Washington, and Jefferson Papers attest.

In February, 1893, a newspaper published in Washington made and reiterated a statement to the effect that the historical archives in the State Department had not been, or were not then, accessible to the historical student except as a special favor, and complained with some acrimony that discrimination had been exercised against a Western investigator and in favor of an "Eastern coterie" or a "Boston coterie." This charge was so persistently maintained that the attention of Congress was drawn to the matter and a resolution of inquiry was adopted by the House of Representatives and referred to the Committee on the Library.

In presenting the report of that committee, the chairman stated that the editor of the newspaper had appeared before the committee at its first session had said that personally he knew nothing whatever concerning the charges, but had referred to a newspaper colleague, also present, as his authority for them in their published form. The inquiry, thus shifted, was continued until a reference was made to the aggrieved author. "The committee addressed him on the subject," continues the report, "and after considerable delay received the following response."

This response, in the form of an affidavit, recites charges involving delays and evasions, as far back as the spring of 1881, by a former custodian of the archives, at the time of its submission no longer in the service of the Government. The committee sent the papers to the Secretary of State for such comment as he might desire to make, and on the 6th of February he returned them, together with copies of the correspondence on file, saying that they had been found to relate to the conduct of a former custodian of the archives, who had ceased to be an officer of the Government on the 31st of May, 1888, and that they were concerned with questions which (in the Secretary's opinion) the Department could not determine.

The matter is summed up in the first and last paragraphs of the committee's report:

The Committee on the Library, to whom was referred the resolution asking for an investigation of charges of favoritism shown to writers by

subordinates in the library of the State Department, which charges were made in the columns of the Washington Post, unanimously report, after due inquiry, they find no reason for such an investigation.

* * * * * * *

The committee recommend that the resolution be tabled, and ask to be discharged.

Although the investigation of the subject by Congress was undoubtedly instigated by the newspaper printing the charges, the report of the committee seems to have been unacceptable, for, notwithstanding the conclusion reached by an impartial tribunal, there appeared on the editorial page of the paper of the 16th of February a statement to the effect that the copies of letters transmitted to the committee by the Secretary of State showed on their face that the complainant had been debarred access to the historical papers he desired, while others more favored "were abstracting their contents."

With what animus these stale charges were resuscitated in 1893 does not appear; for in the sworn statement of the author aggrieved this language is used:

Recently having obtained access to a calendar of the Monroe Papers, and having received assurances that there was a change of policy in the Department of State, I have had some copies made.[1] * * *

This episode is related in order that the principal, active, and perhaps only original source of the existing misconception respecting the archives may be known and appreciated.[2]

The lack of classification mentioned by Mr. Poole is a subject open to the possibility of much discussion. The Department of State has already announced its purpose, under present conditions, touching this important matter, in a note on the index in Bulletin No. 1 of the Bureau of Rolls and Library in these terms:

The existing classification and arrangement of the bound manuscripts (by volume and number) will not be disturbed except where the restoration and preservation of the papers render ripping and rebinding imperative, and in that, as well as in the binding of loose papers, the original classification and arrangement will be followed as closely as may be to avoid the possible confusion consequent upon numerous citations from original manuscripts and references to them by historical writers in their published works.

[1] The copies referred to were made in 1891—at least more than a year before the sworn statement.

[2] House of Representatives, Report No. 2,510, Fifty-second Congress, second session.

The restoration, mounting, and binding of the archives are necessary preliminaries to free and general access to them, while calendars and indexes are essential to the convenient exercise of the privilege of such access.

Before 1886, when work was commenced on the calendars since completed of the papers of Monroe, Madison, and Jefferson, the indexes of the historical archives possessed by the Department consisted of 9 volumes of indexes to the greater part of the papers of the Continental Congress, one volume of indexes to letters to Washington, the indexes accompanying each volume of the transcripts of letters from Washington, a partial list of the Hamilton collection, and the list of the Franklin Papers arranged by Mr. Henry Stevens.

By the sundry civil act, approved on the 2d of March, 1889, the sum of $3,000 was appropriated "for the restoration, mounting, and binding of certain manuscript letters and papers of Washington, Hamilton, Jefferson, Madison, Monroe, and others in the Department of State," etc. By the sundry civil act of August 30, 1890, the sum of $6,000 was appropriated, and by the sundry civil act of August 5, 1892, the sum of $5,000 for the same purpose. With the $14,000 thus specifically appropriated, augmented by as much more as the Department could spare from its allotment for "printing and binding," the restoration, mounting, and binding of the archives was begun and carried on.

The papers were taken up in the order of their requirements. The Monroe and Madison collections were not bound nor adequately listed when received by the Department. The work was accordingly begun with the Monroes by a trained force, employed under a contract with Messrs. Pawson and Nicholson, of Philadelphia, reenforced from the Government Printing Office. Upon the completion of these two collections, the former in 22, the latter in 75 quarto volumes, the "Army Returns" of the Washington collection were taken from their old binding in the autum of 1893 and similarly treated. When 52 volumes had been finished and there remained 3 volumes still to put into leather, this series of papers was transferred to the War Department under the following provision (introduced as an amendment) contained in the sundry civil act of August 18, 1894:

That all military records, such as muster and pay rolls, orders, and reports relating to the personnel or the operations of the armies of the

Revolutionary war and the war of 1812, now in any of the Executive Departments, shall be transferred to the Secretary of War to be preserved, indexed, and prepared for publication.

In the debate on the subject Senator Hoar secured a modification of the form of the original amendment and the adoption of a provision in this language:

That the muster and pay rolls, discharges, and reports relating to the field operations of the army of the Revolutionary war and of the war of 1812, now in any of the Executive Departments, shall be transferred to the Secretary of War to be preserved, indexed, and properly prepared for convenient reference and use: *Provided*, That whenever the head of any Department shall deem the retention of any such records in his Department essential to the convenient transaction of the business thereof, he may direct copies of such records to be transmitted to the War Department in lieu of the originals.

The language of the *law* was a result of the conference on the bill.

In 1893 the Secretary of State asked for $5,000 to continue the work of restoration and binding and to publish indexes of these manuscripts, and in a letter on the subject to the Secretary of the Treasury, dated October 16, he said:

The $5,000 asked for to be expended in restoring, binding, and publishing indexes of manuscript papers is designed for use in the care and preservation of the manuscript records of the Continental Congress, deposited with the Secretary of State in accordance with the act creating the "Department of Foreign Affairs," and of the manuscript papers of Washington, bought for $45,000, appropriated by acts of June 30, 1834, and March 3, 1849; the Jefferson, Madison, and Monroe Papers having been already restored, bound and approximately indexed. The condition of these papers, from age and handling, renders constant care and speedy restoration indispensable to their proper preservation. The indexes contemplated are equally necessary to the use of the collection.

The appropriation was not made, but the work proceeded at the cost of the Department's allotment for "printing and binding," and is still continued at the expense of that fund.[1]

Late in the summer of 1893 a bulletin was inaugurated for the purpose of publishing the calendars and indexes of the historical archives, together with certain special papers.

The initial number of this publication, entitled Bulletin of the Bureau of Rolls and Library of the Department of State, and bearing the date of September, 1893, issued from the press early in December of that year.

[1] A memorandum of the work done in this direction is appended.

Four numbers have already appeared:

No. 1, September 1, 1893, contains a list of the volumes comprising the papers of the Continental Congress, the beginning of a miscellaneous index of those papers, and an appendix commencing the publication of the documentary history of the Constitution of the United States with the proceedings of the Annapolis convention.

No. 2, November, 1893, contains a new edition of the calendar of the correspondence of James Monroe, with corrections and additions.

No. 3, January, 1894, contains a list of the volumes of the Washington Papers, a continuation of the index of the papers of the Congress, and the proceedings of the Federal convention.

No. 4, March, 1894, contains a calendar of the correspondence of James Madison.

No. 5, May, 1894, still in the printer's hands, contains lists of the volumes of the Madison, Jefferson, Hamilton, Monroe, and Franklin collections, a continuation of the index of the papers of the Congress, the Constitution of the United States as framed by the Federal convention, the proceedings of Congress thereupon, and the ratifications thereof by the several States.

No. 6, July, 1894, contains part 1 of a calendar of the correspondence of Thomas Jefferson—letters from Jefferson.

The remainder of the Jefferson calendar and the index of the Jefferson collection, together with a continuation of the index of the papers of the Congress and an index of the Madison calendar, are awaiting the Public Printer's convenience.

On June 27, 1894, with a scheme of printing in contemplation, the Secretary of State wrote to Senator Mills, of Texas:

> I have the honor to inclose herewith for your information and convenient reference a memorandum relating to the "Revolutionary archives" deposited in the Bureau of Rolls and Library in this Department, submitted by the Chief of that Bureau in January last at about the period of our interview upon a project you had in mind for the printing of these valuable historical papers, many of which are greatly in need of permanent protection against the fading and decaying processes of time.
>
> The permanent preservation and use of these papers, however, are dependent upon the adoption of measures for putting them into print and for distributing them in published form, at least to the great libraries and the principal centers of learning and scholarship throughout the country. With this end in view, I can not perhaps more adequately impress upon you the importance and urgency of the matter than by

reference to Mr. Bayard's report[1] and President Cleveland's special message of April 12, 1888, printed in Senate Ex. Doc. No. 142, Fiftieth Congress, first session, inviting the attention of Congress to the desirability as well as the necessity of the publication.

The deposit of these collections by law in this Department, as shown in the inclosed memorandum, the experience involved in their preservation, the knowledge acquired of their contents, the work already done upon them, and the expertness in accurate proof-reading, derived from the duty of promulgation of the laws of the United States by the Bureau having these papers in charge, combine in my judgment to render their publication a duty of this Department and a task more appropriately subject to its supervision than to that of any other branch or office of the Government, and I earnestly recommend an appropriation of $25,000 for this purpose.

As a specimen of printing along the projected line, I send herewith copy of Bulletin No. 3 of the Bureau of Rolls and Library, the appendix to which contains a literal print of the "Proceedings of the Federal convention" from the papers of the Continental Congress.

On the 28th of June, 1894, Senator Mills offered in the Senate this amendment to the sundry civil bill then pending:

To enable the Secretary of State to publish the Revolutionary archives now deposited in the Department of State, twenty-five thousand dollars, of which sum not exceeding ——— dollars may be used in the employment of copyists and other necessary clerical assistance.

The amendment was referred to the Committee on the Library, favorably reported by that committee, and referred to the Committee on Appropriations. The chairman of that committee reported it to the Senate, as the Record recites, on the 31st of July:

Mr. COCKRELL. After line 17, on page 127, is the appropriate place for the amendment of the Senator from Texas [Mr. Mills] about publishing some state documents.

The PRESIDING OFFICER. The amendment will be stated.

The SECRETARY. Add after line 17, page 127: "To enable the Secretary of State to publish the Revolutionary archives now deposited in the Department of State, $10,000."

The amendment was agreed to.

When the bill emerged from the subsequent conference the amendment was modified so as to read—

The Secretary of State is hereby directed to cause the Revolutionary archives, except the military records, now deposited in his Department to

[1] Mr. Bayard's report was accompanied by forty or more inclosures in the shape of letters from prominent writers and students of history commending his plan, and was a strong presentation of the necessities and desires of the Department and the friends of the papers. There was no practical result. But a resolution of August 13, 1888, authorized the publication of Wharton's edition of the Diplomatic Correspondence of the American Revolution, recently completed.

be carefully examined, and to ascertain what portions are of sufficient importance and historical value to publish, and the number of printed volumes they would make, and the reasonable cost of their publication and editing, and report the result to Congress, with such recommendations as he may deem proper.

And so the matter was concluded.

Funds for the preservation and publication of the papers of the Continental Congress have been provided by legislation to the aggregate amount of about $200,000 since the first year of the century; and for the preservation and publication of the six personal collections of these historical archives the total of appropriations is less than $25,000 in fifty years. Since the close of the war of the rebellion the total of appropriations for the publication of the Rebellion Records approaches $2,000,000, and will probably reach $2,700,000.

From the historical archives the papers published with the money thus appropriated are the Journals of Congress and the Secret Journal; The Journal of the Federal Convention; 9 volumes of the Force Archives; the Diplomatic Correspondence of the American Revolution, by Sparks; the same, later, by Wharton; 3 volumes of Diplomatic Correspondence, 1783 to 1789, covering the first six years after the peace, by Sparks; the Madison Papers, the Jefferson Papers, the Hamilton Papers. All the publications, except the Journal of the Federal Convention, were imperfect, but none more so than the Journals of Congress.

"The State Department," Mr. Poole continues, "has no space for historical archives and no archivist who understands their management or has time to give to the needs of historical investigators. Indeed, these are not the functions of the State Department."

That the Department of State lacks convenient space for its *offices* is in a measure true; but there is space to spare in the building, and an act of Congress allotting it is all that is necessary, for the Department's original space was reduced by legislation transferring it to the neighboring Departments.

That the Department has no archivist who understands the management of historical manuscripts is a statement that possesses the merit of novelty, whatever it may lack. The Department of State is the only Department of the Government that has treated old archives scientifically, and the papers, restored and bound, speak for themselves.

The Department has no archivist who "has time to give to the needs of historical investigators," says Mr. Poole. On the contrary, the custodian of the manuscripts has time and has always had time to give to the needs of historical investigators, within reasonable bounds. These bounds are indicated in two passages of a letter of October 18, 1890, by the Second Assistant Secretary of State. He wrote:

> First. The Department can not undertake to do any part of the work of an editor or a compiler.
>
> Secondly. It neither has anyone who could properly take the responsibility of making any selection of papers for a private citizen, nor has it a sufficient force to enable it to copy the papers after selection has been made.

But copyists have been repeatedly, and are constantly accommodated.

One of the functions of the Department of State conferred by the acts creating it an Executive Department is the care of the historical archives of the Continental Congress. That function has been continuously and is still exercised, according to the means provided, by a force trained to the custody and preservation of some of the most valuable archives of the Government—the laws of the United States since the foundation of the nation, and the treaties with foreign powers since the treaty of February 6, 1778, with France.

I have said that the purpose of the Department of State was to make these papers accessible to historical investigators. With that purpose in view the Department is doing everything permitted by its resources. It can hardly with propriety be advertised in the newspapers, nor committed to a general circular of information to be distributed indiscriminately without solicitation. It has, however, during the past year been made known by the Bulletin, and earlier, presumably, through persons exercising the privilege of access. It has been obstructed during the same period by the newspaper assault recited, and by the paragraph in a report of the last annual meeting of this association already quoted. All adverse action, as I have suggested, is perhaps traceable to one source. But whether that be so or not, we may properly consider the apparent difference of motive. In its constitution this association declares that "its object shall be the promotion of historical studies." Mr. Poole's mistaken assertions were undoubtedly made from impersonal motives, with that object in

mind. Beyond the revival of a personal attack upon a former custodian of the papers, the only evident object of the newspaper was a sensation. The newspaper charges, considered by an unbiased committee and disposed of, may safely be eliminated from further consideration here as an obstruction to the profitable uses of the archives.

The object of this association, so far as these precious papers are concerned, can just now be served better by the exercise of its influence for legislative action providing for the preservation and publication of the papers than by the suggestion or promotion of measures looking to the erection of a hall of records. Let that come later.

An augmentation of the force engaged in the work of preservation and enlargement of space by acquisition of one or two additional rooms are the pressing needs. Government building is slow; the completion of such a depository as a hall of records is somewhat remote, however desirable. The papers in their present condition can not be expected to survive time and wear indefinitely. They have not been dipped in the fountain of Ponce de Leon's quest; they can not be withheld from inspection, except when actually in the hands of the restorers. On the other hand the work can not properly progress in haste. Experience and skill are essential to its adequate performance. It is hardly worth while to spend effort in combating extreme theories. These manuscripts can not be shuffled like cards nor rushed into print like a newspaper "extra."

Meanwhile access to them will continue to be asked and accorded without special favor, and with no further discrimination of individuals by the Department than that involved in a necessary ascertainment of the carefulness, responsibility, and good faith of the investigator, a discrimination which will probably debar only curiosity seekers and unaccredited persons, a class with which the custodians of the archives have had comparatively little or no acquaintance.

A comprehensive announcement on the subject of access has already been made in these terms by order of the Secretary of State:

> The privilege of access to the manuscript archives of the Department of State may be secured, so far as the facilities at command and the convenience of the office admit, upon application by letter to the Secretary of State. Applicants should describe as concisely and definitely as may be possible the papers they desire to consult, the scope of the examination

contemplated, and the period of time during which they purpose to avail themselves of the permission if accorded.

The privilege is to be exercised under the following

SPECIAL RULES.

I. Persons to whom the privilege of consulting the manuscript archives of the Department of State is granted can exercise the permission only subject to the convenience of the Department and the uninterrupted transaction of its business.

II. No manuscript shall at any time be taken out of the Department except by order in writing of the Secretary or an Assistant Secretary.

III. No manuscript shall be taken out of the Bureau of Rolls and Library into any room of the Department until a receipt in form and descriptive of the paper or volume be signed by the official taking the same and delivered to the Chief of the Bureau, or, in his absence, to the person in charge.

IV. No manuscript shall be detained from its place on the shelves of the Bureau of Rolls and Library after 4 p. m. of the day it shall have been taken; and no manuscript shall be taken from its place on the shelves by any others than the clerks in charge, except by special arrangement in exceptional circumstances.

V. The use of the indexes in the room in which the old archives are deposited is not permitted except through the clerks in charge.

VI. The privilege of consulting the manuscript archives does not include the use of the library. The latter privilege must be independently asked of the Chief of the Bureau of Rolls and Library.

To deal practically with these historical papers this association should place itself in accord with the Department or direct its efforts to the modification or enlargement of existing official methods—whichever course may seem the wiser. It is not believed that any historical student has been deterred from seeking access to the archives by any other than exterior agents, of which, since the publication of its last annual report, the American Historical Association must be considered one. It is hardly necessary for me to add that it is not believed that Mr. Poole would have made the report he did make upon a condition of affairs respecting these papers as existing in 1893, had he or any reliable representative of his visited the Bureau of Rolls and Library within a year or two preceding the date of his statement, when the facts at first hand were obtainable and were not in agreement with his authority.

The depository of these archives—the Department of State—has offices in a fireproof building of stone and iron that has been justly described as superior to any other building in the world for Government uses. The danger described by the

author of a paper presented at the last meeting of this association, "that by a single accident the nation might be stripped of these treasures of the past," is reduced to the least minimum by care and watchfulness. The most precious of the archives—the two great charters—the Declaration of Independence and the Constitution of the United States—are preserved in a steel case in the iron hall of the library of the Department. And it does not seem to be commonly known that the Secretary of State forbade their transmission to Chicago for exhibition at the World's Fair at the risk of a railway accident in transit and fire after their arrival—hazards sufficiently apparent and by no means trivial.

The Declaration had come to the Department of State from the Continental Congress. It had been subjected to a process early in the century, in securing a facsimile for a copperplate, that caused the ink to fade and the parchment to deteriorate. It had been deposited on the 11th of June, 1841, in the Patent Office, then a Bureau of the Department of State, and when that office was transferred with its records to the Interior Department by act of March 3, 1849, the Declaration had gone there to be placed on exhibition in a brilliant light, causing further dimness and decay. It was returned to the Department of State in March, 1877, upon the completion of fireproof quarters, and after exhibition at the Centennial Exposition in Philadelphia, and placed in the library of the Department. In February of 1894 it was put away out of the light and air, and this notice was posted on the exhibition case:

> The rapid fading of the text of the original Declaration of Independence and the deterioration of the parchment upon which it is engrossed from exposure to the light and from lapse of time render it impracticable for the Department longer to exhibit or to handle it.
>
> For the secure preservation of its present condition, so far as may be possible, it has been carefully wrapped and placed flat in a steel case, and the rule that it shall not be disturbed for exhibition purposes must be impartially and rigidly observed.
>
> In lieu of the original document a facsimile is placed here.
>
> By order of the Secretary of State.

The plate for engraving facsimile copies is now in the Office of the Coast and Geodetic Survey, in order that an "alto" and a "basso" may be made from it for electrotyping copies.

When this process shall have been completed the plate will be covered and carefully stored with the Department's archives. For, while the full text of the original Declaration is legible,

the signatures have with but few exceptions vanished; and so the value of the copperplate is inestimably enhanced.[1]

All the documents relating to the Constitution are being carefully printed through the medium of the Bulletin of the Bureau of Rolls and Library in a documentary history. Bulletin Nos. 1, 3, and 5 are completed, carrying the narrative through the ratifications by the several States. The documents are literally printed; all the proof is closely and thoroughly read twice, and later revised with scrupulous care to insure accuracy.

Thus about all that can be done has been or will be done for the permanent preservation of these two historic records.

But as time closes something is necessarily left unsaid. Contradiction of generally accepted statements is unavoidable in an endeavor to correct existing error touching the manuscript collections of the Department of State; but the contradiction is incidental to the purpose. The purpose has been, without ulterior aim, to relate the facts, to present the situation, and to announce to all interested investigators the liberal desire of the Department to aid them to the extent of its resources of time, space, force, and funds, and its disposition to enlarge those resources by the reasonable and appropriate means compatible with the object sought—the object sought both by the custodians of these historical archives and the American Historical Association—the promotion of the study and knowledge of the history of the nation and the preservation of its records.

MEMORANDUM ON THE RESTORATION, MOUNTING, AND BINDING OF THE HISTORICAL ARCHIVES.

The process of restoration involves a strengthening of each paper requiring it, and the piecing out of ragged edges, by a trained process.

The mounting comprises the attachment of each paper to a linen hinge, which is in turn affixed to a sheet of heavy "ledger paper," also provided with a linen hinge.

The binding is in volumes of half leather and cloth, of a weight not too great to bear handling, and of the size and shape of a large quarto. The present purpose is to reduce the length and breadth of the volumes, while maintaining a uniform thickness.

[1] Since this paper was read the work of the Coast and Geodetic Survey indicated has been completed, and the original copper-plate of the Declaration has been placed in a fireproof safe.

Since July, 1889, there have been restored, mounted, and bound:

	Vols.
The Madison Papers	75
The Monroe Papers	22
The "Army Returns" (Washington Papers)	52
Papers relating to the treason of Arnold and the trial of André	1

Several individual papers in the Washington collection have been inlaid, bound, and boxed by reason of special and unique value, and 1 volume of the papers of the Continental Congress has been similarly treated. They are—

	Vol.
Forms of writing (Washington Papers)	1
School copybook (Washington Papers)	1
"The United States in Account with G. Washington"	1
Meteorological record (Washington Papers)	1
Diaries 1, 2, and 3, in one box (Washington Papers)	1
"Rough" Journal of Congress (Papers of the Congress)	1

During the same period there have been restored and mounted, but not bound—

Privateer bonds of the Revolution:	Bonds.
Maryland	142
Massachusetts	548
Pennsylvania	571
New Jersey	4
Rhode Island	14
South Carolina	1
Virginia	62
Connecticut	166
New Hampshire	104
Miscellaneous	12
	1,624

Continental Congress:	Sheets.
Reports of committees on application of individuals—	
Vol. 1, No. 19, 627 pages	243
Vol. 2, No. 19, 535 pages	180
Vol. 3, No. 19, 623 pages	240
Vol. 4, No. 19, 533 pages	200
Vol. 5, No. 19, 587 pages	240
Vol. 6, No. 19, 607 pages	270
Reports of committees, vol. 30, 623 pages	271
Reports of committees, vol. 31, 387 pages	155
Reports of committees, vol. 28, 323 pages	132
Reports of committees on the state of the week, 633 pages	250
Applications and recommendations for office, chiefly Revolutionary officers, 258 pages	263
Reports of committees of conference, 427 pages	172
Articles of Confederation, 349 pages	120
Reports of committees to state the public debt, 321 pages	131
Letters from the comptroller of claims, 261 pages	88
Reports of committees on the War Office, 409 pages	144

Continental Congress—Continued.	Sheets.
Motions in Congress	2, 170
Reports of the marine committee, 543 pages	178
Papers relative to mutiny, 1783, and the "peace establishment," 483 pages	158
Proceedings of committee of 1780, appointed to repair to headquarters, 237 pages	161
Letters and papers of the committee of 1780, 149 pages	164
Circular letters and miscellaneous reports, 482 pages	187
New Hampshire grants No 40—	
Vol. 1, 579 pages	225
Vol. 2, 483 pages	178
Memorials—	
Vol. 1, 481 pages	149
Vol. 2, 584 pages	174
Vol. 3, 562 pages	165
Vol. 4, 507 pages	151
Vol. 5, 439 pages	140
Vol. 6, 532 pages	151
Vol. 7, 334 pages	105
Letters to Washington—Washington Papers, No. 78, 1 volume, 419 pages	215

Oaths of Allegiance (Army Returns), Washington Papers, part 2 of Vol. I and parts 1 and 2 of Vol. II.

Jefferson Papers, series 4, Vol. I, "Notes Memorandums" while Secretary of State, 614 pages, 614 sheets.

NOVEMBER 30, 1894.

XVIII.—APPEALS FROM COLONIAL COURTS TO THE KING IN COUNCIL, WITH ESPECIAL REFERENCE TO RHODE ISLAND.

By Harold D. Hazeltine.

American history presents no more important or absorbing subject of consideration than the origin and development of our colonial institutions. While the record of our social and political achievements is fascinating and instructive, the result of recent investigations has added a new interest to the study of our institutional history; for we now appreciate more fully than ever that the systems of society and government developing in the colonies finally came to possess a broader usefulness in the constitutional life of the United States.

We look to England for the origin of the essential features in our system of justice, and the thought of the English privy council as the predecessor of our highest federal tribunal has, in general terms, been entertained and stated. Yet it is believed that this interesting element in our constitutional development has never been fully presented to the attention of historical scholars. So far as the writer knows, no one has ever made a thorough and systematic investigation of colonial appeals to the King in council. The importance, however, of the practice of appealing from colonial courts to that tribunal as a court of last resort is obvious. This practice taught the colonists to look more and more to a supreme tribunal for the adjudication of their legal cases, and to accept as law the judicial opinions of that body. It accustomed them to regard the courts of the different colonies as but parts of a judicial system which found a unifying principle in a court of final appeal. In short, this practice prepared them for the erection of a new court, with functions similar to those of the council, when the time came to organize a government for themselves. During the development of this practice, moreover, the important doctrine of American jurisprudence which grants to the judiciary the power of setting aside an act of the legislature

as being repugnant to the fundamental law of the land received sanction from England in the privy council's decision of a certain American case.[1]

The object of the present paper will be to present the result of recent researches by the writer in regard to this neglected phase of our constitutional history. While it has been impossible for him, up to the present time, to investigate the subject in detail in more than one colony, it is hoped that the history of appeals from the illustrative colony of Rhode Island, prefaced by a brief survey of appeals from the British colonies in general prior to the American Revolution, and supplemented by an account of the procedure of the King in council in such cases, will give some conception of the practice in its relations to English and American institutions.

Judge Story has said[2] that "the essential criterion of appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted, and does not create that cause." The doctrine thus clearly stated by this eminent American jurist is essentially the same as that held by the privy council in regard to its own jurisdiction over the English colonial courts. In the very first order in council regulating appeals from a British colony[3] it was decreed that "no appeal in any cause or matter, great or small, be permitted or allowed before the same matter be fully examined and ended by definitive sentence or other judgment having the force or effect of a sentence definitive." While the King in council exercised an original jurisdiction within certain limits, and had powers other than judicial, such as those exercised in the administration of the political affairs of the colonies, the present inquiry is concerned only with matters pertaining to this appellate authority over the judiciary of foreign possessions of the Crown; an appeal, as the term is here used, being a legal proceeding by which a case was removed from a colonial court to the King in council for final adjudication, after a certain definitive judgment or judgments had been passed upon it by one or more of the colonial tribunals.

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[1] Winthrop *v.* Lechmere, Connecticut, 1727–28.

[2] Commentaries on the Constitution of the United States, § 1761.

[3] Order in council regulating appeals from Jersey, May 13, 1572. See Macqueen's Appellate Jurisdiction of the House of Lords and Privy Council, p. 735.

It is well to remember, in this connection, that in much of the documentary material regarding the relations between the colonies and the home Government the word "appeal" is not always used in this legal sense. The word refers in some instances to what is more properly designated as a complaint, or a form of procedure by which colonists presented to the attention of the Crown certain accusations against governors or other colonial officials.[1] It refers, in other instances, to what is more correctly entitled a petition, or a proceeding which was more comprehensive and customary than a simple complaint. Even in certain official decrees of the King in council the terms appear to be confused, regular judicial appeals, legally granted by colonial courts, being referred to as "petitions of appeal."[2]

While, however, complaints and petitions, sometimes designated as appeals, were, as a usual thing, political and not judicial in their character, the English right of petition was occasionally used by the colonists in judicial proceedings.[3] In some cases of refusal on the part of colonial courts to grant appeals to England, the parties aggrieved petitioned the King in council to allow such appeals; and acting as the tribunal with supreme authority over all colonial courts, the King and council took these petitions into their consideration, and either allowed or refused the appeal to their judgment. The right of petition was so used in the famous American cases of Winthrop *v.* Lechmere and Phillips *v.* Savage.[4] On petition, also, the appellee sometimes secured the dismissal of an appeal for nonprosecution, with the payment of costs by the appellant.[5] In still other cases petition secured relief from the obstruction of justice in colonial courts.[6]

The right of appeal to the Crown in judicial proceedings was an established principle of English constitutional law during the period now under consideration, and was clearly expounded by the privy council itself. In the order in council

[1] Colonial Records of North Carolina, II, p. 161–163.

[2] Order in council, June 12, 1739, deciding Rhode Island case of Coggeshall *v.* Coggeshall.

[3] Colonial Records of North Carolina, II, p. 161.

[4] See Chalmers's Opinions, II, p. 227, for reference to petition of Peter Van Bell, of Nevis, in 1704.

[5] Order in council, December 21, 1738, deciding Rhode Island case of Martin *v.* Gibbs.

[6] Macqueen, pp. 801, 805, 806.

of March 9, 1698, the governor and company of Connecticut were directed to take notice that it was "the inherent right of His Majesty to receive and determine appeals from all His Majesty's colonies in America; and that they govern themselves accordingly." In the famous privy council case of Christian *v.* Corren, appealed from the Isle of Man in 1716, this doctrine was more fully stated, it being held, also, that the right of appeal applied to both subject and sovereign. It appears, from the official record of this case,[1] that the Earl of Derby, King of the Isle of Man, made a decree concerning the lands in that island, and that the person against whom this decree was issued appealed to the privy council. The principal question at issue was whether an appeal should lie before the King in council, there being no reservation, in the grant made of the Isle of Man by the Crown, of the subject's right of appeal to the Crown. It was urged by the counsel for the appellant "that it appearing, in this case, that H. 4 had granted the Isle of Man to the Earl of Derby's ancestors, to hold by homage and other services, though there was no reservation of the subject's right of appeal to the Crown; yet this liberty was plainly implied. For that such liberty of appeal lay in all cases where there was a tenure of the Crown; and it was the right of the subjects to appeal to the sovereign to redress a wrong done to them in any court of justice; nay, if there had been any express words in the grant to exclude appeals, they had been void; because the subjects had an inherent right, inseparable from them as subjects, to apply to the Crown for justice. And on the other hand," the counsel further argued, "the King, as the fountain of justice, had an inherent right, inseparable from the Crown, to distribute justice among his subjects; and if this were a right in the subjects, no grant could deprive them of it; the consequence of which would be, that in all such cases, viz, where there were words exclusive of such right of appeal, the King would be construed to be deceived and his grant void: also precedents were cited in point." Lord Chief Justice Parker, who assisted at council upon this occasion, held that the King in council had necessarily a jurisdiction in this case, in order to prevent a failure of justice. Upon the weight of argument thus presented, the council decided that an appeal lay before them, and gave a

[1] Peere Williams' Reports, I, p. 329.

judgment in favor of the appellant. Furthermore, the privy council instructions by which the governor of a colony was restrained from admitting appeals to the King in council, when the matter or sum in controversy was below a certain prescribed value, were considered as restraints upon the governor alone, and not as precluding His Majesty from entertaining appeals in cases of any value, where he should deem it advisable;[1] and this royal prerogative, or right, was often thus exercised by the King in council.[2]

The exercise of the right of appeal secured important advantages, both to the colonist and the Crown. To the colonist it provided a means of relief from the arbitrary proceedings of colonial courts, which were often disposed to allow political or personal views and prejudices more weight than justice and law in the formation of their judicial opinions. It was beneficial to the Crown for the reasons that otherwise the law designed for the inferior dominion might be considerably changed without the assent of the superior dominion, and that judgments might be given in the courts of the inferior dominion to the disadvantage or lessening of the superiority of the Crown, or to making the superiority of the King only and not of the Crown.[3]

Believing that the right of appeal to the Crown as an essential element of English jurisprudence has been fully substantiated by the facts thus far presented in this paper, we shall proceed now to consider the conditions under which the privy council came to assist the King in the adjudication of these colonial cases. Two theories have been advanced in regard to the origin of this appellate jurisdiction of the council.

The first theory is the one set forth by Governor Pownall, in his treatise on the administration of the British colonies in America. Governor Pownall asserts[4] in this work that at the time of settling the American colonies there was no precedent of a judicatory besides those within the realm, except in the cases of Guernsey and Jersey, which were remnants of the duchy of Normandy, and not united to the realm. According to the custom of Normandy, appeals lay to the Duke in council; and on this ground appeals lay from the judicatories of these

[1] Burge's Colonial Law, I, Introd., p. lvii.
[2] Chalmers's Opinions, II, p. 177.
[3] Story's Commentaries, I, § 175.
[4] Pownall on the Colonies, second edition, p. 82.

islands to the King of England, as Duke in council; and on this precedent also followed appeals from the courts of the American colonies to the King in council. The theory thus adduced by Governor Pownall is accepted by Burge,[1] Millar, and Clarke; Mr. Burge, in his Colonial Law, affirming that the opinion presented by Governor Pownall "receives confirmation from the practice which prevailed of making the reference of appeals from Guernsey and Jersey to a committee of the privy council by a distinct and separate order from that by which appeals from the plantations were referred."

Macqueen, in The Appellate Jurisdiction of the House of Lords and Privy Council,[2] states that Governor Pownall must be in error in asserting that at the time of settling the American colonies there was no precedent, except in the cases of Guernsey and Jersey, of a tribunal in England invested with jurisdiction over the foreign possessions of that country; for of the two classes of parliamentary triers one was especially assigned to take cognizance of petitions, not only from Guernsey and Jersey, but from all of the other continental possessions of England—Gascony, Aquitaine, Guienne, *et les autres terres et pays de par la mer et des Isles.* Furthermore, Governor Pownall's assertion that Guernsey and Jersey continued to be remnants of the duchy of Normandy is not substantiated by proof or probability. From the history of those islands it would rather appear that they have been attached and faithful to England ever since the date of the Norman conquest. In his opinion, also, Pownall's belief that appeals were brought from the Channel Islands to the King in council, by analogy to the Norman practice of appealing to the Duke in council, "seems alike unnecessary and unwarrantable. * * * From the Coutumes de Normandie it appears that an appeal lay to the court of Parliament. An appeal to the 'Duke in council' might well have meant, and most probably did mean, the Parliament; which, according to the feudal policy, was * * * always the last resort of litigants."

Macqueen's theory, indeed, is that Parliament itself was previously the "supreme and ultimate jurisdiction" of Jersey and Guernsey; that the ancient practice of England was to redress the grievances of the Channel Islands, not in the privy council, but in the court of Parliament. To prove that

[1] Colonial Law, I, Introd., p. xlvi.

[2] Pages 682–686.

Parliament dispensed justice to these islands, he cites a petition "in Parliamento," which was sent over from the "poor inhabitants of the isles," in 18 Edward II (A. D. 1324–25), addressed to the King and his council.[1] The council here referred to, Macqueen affirms, was the King's *magnum concilium*, or Parliament, as the whole proceeding was parliamentary, and registered as such in the Rolls of Parliament. It appears from this petition, moreover, and the response made to it, that "the ancient method of redressing errors complained of by the inhabitants of the Channel Islands was by commission, issued in Parliament, and addressed either to persons of local authority, or to certain of the King's judges, sent thither as justices itinerant; and when * * * the parties continued still to be dissatisfied, the highest remedy of all was at last afforded them, namely, a writ of error from chancery, returnable before the King in the court of Parliament. It may, indeed, be said that the response to the" above-mentioned "petition does not show that the errors complained of were necessarily to be corrected in the court of Parliament; the terms of the order being merely 'to bring the errors before the King,' without more. But the material thing is, that the petition is addressed to the King and his council 'in parliamento;' and that the order for redress issues from the Parliament. It is probable, too (though that is a point less material to the present argument), that the writ of error granted to the islanders would have been made returnable before the King in Parliament, in the usual way, no other court being mentioned in the response."[2] It appears that this system of revision by parliamentary or royal commissioners, with an ultimate appeal to the King in his *magnum concilium*, continued until it became either impossible or at least very difficult for the islanders to obtain redress for grievances by that procedure. Finally came the intermissions of Parliament which gave rise to the erection of the court of exchequer chamber for the determination of writs of error from the court of Queen's bench; and it was these intermissions that occasioned the establishment of a tribunal, in place of the court of Parliament, for

[1] For accounts of the King's various councils, see Crabb's History of English Law, pp. 217, 218; and Bowyer's Commentaries on the Constitutional Law of England, pp. 123–129.

[2] See further, Macqueen, p. 685, note (*d*).

the adjudication of appeals from the Channel Islands. This substitutionary tribunal was the privy council.

Such are the two theories, and in all justice to the weight of evidence produced by Governor Pownall and Mr. Macqueen, the theory advanced by the latter must be accepted as the true interpretation of the origin of this most interesting court of appeals. We are now prepared to trace the general history of appeals to the King in his privy council. In this way we shall see clearly that the rise of the practice here in the New World was due in part, it is true, to local causes, but in a greater degree to the general doctrine that such a practice was the natural outgrowth of the rights and liberties of all British subjects.

The privy council began the exercise of its functions as a court of review with the island of Jersey.[1] We are assured in a letter received from the greffier of Jersey by Mr. Reeve, of the council office, that appeals were first granted to the privy council from that island in the reign of Henry VIII,[2] or between 1509 and 1547. In the official Records of the Council, however, the first indication of an appellate jurisdiction is the order in council of May 13, 1572, which provides for appeals from Jersey. It appears that Jersey laws in regard to appeals were in much need of reformation, and on the petition of Helier de Carteret, Lord of St. Owne, and one of the jurats of justice, the privy council issued this order. The terms of the order were—

> That no appeal be admitted or allowed from any sentence or judgment in any matter or cause not exceeding the value or sum of seven pounds sterling of current English money; that no appeal in any cause or matter, great or small, be permitted or allowed before the same matter be fully examined and ended by definitive sentence, or other judgment having the force or effect to a sentence definitive; that every appeal shall be presented within three months next ensuing the sentence or judgment given therein, except there be in the cause a lett or impediment to be proved before their lordships, being the judges of appeals, and by their lordships allowed; that no appeal be hereafter received without the coppie, as well as the sentence or judgment, as also of the whole greffe of the cause, closed together under the seal of the isle. And that there be no lett or hindrance to the appellants in hearing thereof, it is ordered by the said lords that the bailliff and jurats of the isle, from whom the appeal shall be made, shall upon request made to them deliver or cause to be delivered to the said parties appellants the said coppie within eight days after such request.

[1] Macqueen, p. 735.
[2] Ib., p. 686.

The only regulation in regard to time contained in this order appears to be that the act of the court below, or official transcript of the decree appealed from, must be deposited in the privy council office within three months from the date of the decree. According to this order, also, an appeal might be carried to the King in council in a matter of as small value as £7.

Undoubtedly suits of a very trivial nature were actually appealed to the council under this latter regulation; for by an order of May 19, 1671, it was decreed "that no appeal for movable goods or personal estate be henceforth allowed unless it be of the value of three hundred livres tournois[1] per annum; nor for inheritance or other real estate, unless of the value of five livres tournois per annum."

A further order in regard to appeals from Jersey was issued by the King in council on August 28, 1580. This declares "that it shall not be lawful to appeal in any cause criminal or of correction, nor from the execution of any order taken in the Court of Chief Pleas, nor in Cries of Haro."

While the writer has been unable to find any privy council regulations in regard to appeals from Guernsey, it is probable that such cases were subject to the same or similar rules as those from Jersey; for these two islands were for a long time the sole colonial possession of the Crown, and were classed together as the Channel Isles.

Jersey and Guernsey having no representative in Parliament, their interests seemed of little concern to that body or to the nation at large; and, as we have already remarked, Parliament finally came to be exceedingly lax in the dispensation of justice to these islands. Their inhabitants, therefore, welcomed the change in England's judicial system by which the adjudication of their appeals was transferred from the court of Parliament to the privy council. But Parliament itself was not so willing to grant to the privy council, as an independent tribunal of justice, the jurisdiction of appeals from the colonies. By an act of the Long Parliament the court of requests and the Star Chamber[2] were abolished, and it was declared that neither His Majesty nor his privy council have, or ought to have, any jurisdiction by English bill, petition, articles, libel, or any other arbitrary way whatsoever upon the

[1] A livre tournois was equivalent to a modern franc, or 19 cents.

[2] Both of these courts were composed of privy councilors. See Bowyer's Commentaries, p. 126.

estates of the subject. Yet notwithstanding this action by Parliament, the separate and independent jurisdiction that the privy council soon actually possessed was gradually extended to other foreign possessions of the Crown, until at last the council's ancient allegiance to the court of Parliament was obsolete and forgotten.[1]

The general appeal regulations of the King and council applied to the American colonies, including Rhode Island, and are thus of special interest and importance to us in the present inquiry.

The first of these general regulations appears to be an order in council of 1683. The records state that on January 23 of that year it was—

> Ordered by his Majesty in Councill, that no appeals be for the future admitted at this Board from any of his Majesties fforeign plantations, unless there be sufficient security first given by the appellants, as well at this Board as in the respective plantations, to prosecute their appeals effectually and to stand the award of his Majesty in councill thereupon.

The order specifies no definite sum as necessary for such security, but the appellant in the case of Cooke *v.* Saintlo, appealed from the island of Nevis in 1686, gave security in England in the sum of £1,000.[2]

In 1689 colonial governors were directed by their instructions not to allow any appeal to be made to the King in council unless the estate or other matter in question amount to the value of £500.[3] This regulation prevented an inspection into the conduct of governors and courts in all cases of a less value than £500, and thus gave them an ultimate jurisdiction in practically all of the litigation of the day. It is estimated, indeed, that inasmuch as most of the suits in the colonies at that time were in regard to commerce, not one in fifty was of the value of £500. In many cases, also, where the governors, according to these instructions, ought to have allowed appeals they frequently refused them, on the ground that the land, estate, or negro slaves sued for were not of the required value, although it was evident that they were worth much more. It was this custom of refusing an appeal in cases where it should have been granted according to the true intent of the instructions that largely occasioned the practice, already referred to, of petitioning the King in council for permission to appeal.

[1] Macqueen, p. 686.

[2] Order in council, October 27, 1686.

[3] Colonial Records of North Carolina, II, p. 161.

A practice in the colony with whose history we are especially concerned in this essay occasioned the passage of the next important general regulation of appeals. It often happened in cases of appeal to the King in council from the decisions of the Rhode Island assembly, as a court of error, that these decisions were reversed, and that in the meantime execution had been granted by the assembly, although no security was given by the appellee to make restitution in case of reversal.[1] The subject was brought to the attention of the privy council, and action taken on July 5, 1726. On the 28th of the same month instructions were sent to all of the colonies to suspend execution in such cases until the final issue, unless adequate security was given by the appellee.

The instructions of 1746[2] form, perhaps, the most important of all the English regulations of appeals prior to 1776. According to these instructions, in all the British colonies, except those in which the courts were constituted by charters or orders in council, the governors were directed to allow appeals to His Majesty in council. The forty-seventh instruction provides for the appeal to the governor and council from the courts of law in the colonies, and directs that if either party shall be dissatisfied with the judgment of that tribunal he may then appeal to the King in council. This ultimate appeal, however, was subject to the further provisions that—

> the sum or value so appealed for unto us exceed five hundred pounds sterling, and that such appeal be made within fourteen days after sentence, and good security given by the appellant that he will effectually prosecute the same, and answer the condemnation, as also to pay such costs and damages as shall be awarded by us, in case the sentence of the governor and council be affirmed: *Provided nevertheless*, where the matter in question relates to the taking or demanding any duty payable to us, or to any fee of office, or annual rent, or any such like matter or thing, where the right in future may be bound; in all such cases you are to admit the appeal to us in our privy council, though the immediate sum or value appealed from be of less value. And it is our further will and pleasure that in all cases where by your instructions you are to admit appeals to us in our privy council, execution be suspended until the final determination of such appeal, unless good and sufficient security be given to the appellant to make ample restitution of all the appellant shall have lost by means of such judgment or decree, in case upon the determination of such appeal such judgment or decree should be reversed, and restitution awarded to the appellant.

[1] Arnold's History of Rhode Island, II, p. 83.

[2] February 4, 1746.

It will be noticed that this legislation formulates anew the instructions issued to governors in 1689 and the order in council of July 28, 1726. While, however, the instructions of 1689 provide simply that an appeal is to be allowed where the estate or other matter in question amounts to the value of £500, the instructions of 1746 further stipulate that in all cases relating to duties payable to the Crown, fees of office, annual rents, or any such matter, an appeal shall be allowed, even though the amount involved be less than £500. It will be observed, further, that while the order in council of 1572, regulating appeals from Jersey, requires that every such appeal shall be presented within three months next ensuing the sentence or judgment given in the island court, unless for good reason the privy council grant an extension of time, the forty-seventh instruction provides that appeals be made within fourteen days after sentence. These instructions of 1746 applied to appeals from the governor and council as a court of error, but under their provisions, inasmuch as there was no other instruction, the governor also admitted appeals from his decisions as chancellor and ordinary.[1]

We must now pass on to the special consideration of appeals from the British colonies in America.

Among these possessions of the Crown were the islands of Barbados and Nevis. According to the governor's instructions, appeals from all tribunals in Barbados, including the court of exchequer, were first heard by the governor and council as a court of chancery; and if any party to a suit was dissatisfied with a decision of this court he then had the privilege of appealing to the King in council.[2] Appeals from the president and council as a court of chancery in Nevis were also heard by the King in council; but appeals from the president and council as a court of admiralty, with authority derived from the admiralty of England, were heard by that court and not by the King in council.[3]

Of the instruments of government granted to the thirteen colonies which subsequently formed the United States of America, the first containing reference to appellate proceedings in England is the Carolina charter of 1663. This document stipulates that "the inhabitants of the said Province,

[1] Burge's Colonial Law, I, Introd., p. xlviii.
[2] Chalmers's Opinions, II, p. 175, sec. 16.
[3] Ib., II, p. 227, sec. 12.

nor any of them, shall at any time hereafter be compelled or compellable, or be anyways subject or liable to appear or answer to any matter, suit, cause or plaint whatsoever, out of the Province aforesaid, in any other of our islands, colonies, or dominions in America or elsewhere, other than in our realm of England, and dominion of Wales." The Carolina charter of 1665 contains the same provision. It is certainly true that the wording in these charters is so general that we may well question whether appeals to the King in council were included within their provisions. Yet by 1663 the privy council had an independent jurisdiction in colonial cases, and it is quite as safe to assume that appeals to this tribunal were among the causes to be heard in England as that reference was made exclusively to appellate proceedings in other English courts. In the New York patent of 1664, however, we discover direct reference to appeals. The instrument states that Charles II gives and grants unto James, Duke of York, "full and absolute power and authority to correct punish pardon governe and rule * * * saving and reserving to us our heirs and successors the receiving hearing and determining of the appeal or appeals of all or any such person or persons, of in or belonging to the territoryes or islands aforesaid in or touching any judgment or sentence to be there made or given." Practically the same provision is found in the confirmatory patent of 1674. While these New York instruments refer, in general terms, to appeals "to us our heires and successors," there can be no doubt that appellate proceedings before the King and his privy council were intended by the framers.[1]

The New Hampshire commission of 1679[2] is apparently the first colonial instrument of government containing definite and explicit provisions in regard to appeals to the privy council. The commission confers both executive and judicial powers on the president and council, appointed by the Crown, and further recites that—

notwithstanding it is Our will and pleasure, and so we do hereby expressly declare, that it shall and may be lawfull from time to time to and for all and every person and persons, who shall think himself or themselves aggrieved by any sentence, judgm[t] or decree pronounced, given or made (as afors[d]) in, about or concerning the title of any land, or other reall

[1] See Story's Commentaries, I, pp. 72, 74.

[2] This commission passed the great seal September 18, 1679, but did not go into effect until the year following.

estate, or in any personall action, or suit above the value of 50^{li} and not under, to appeal from said Judgm^{t}, Sentence and Decree unto us, Our heirs and successors, and our and their Privie Councell. But with and under this caution and limitation; That the Appellant shall first enter into and give good security to pay full costs, in case no relief shall be obtained upon such decree. And our further will and pleasure is, and so do we hereby declare; That in all criminall cases, where the punishm^{t} to be inflicted on the offenders shall extend to loss of life or limb (the case of willfull murder excepted) the psn. convicted shall either be sent over into this Our Kingdom of Eng^{d} with a true state of his case and conviction; or execution shall be respited until the case shall be here presented unto us, our heirs and successors, in Our and their Privie Councell, and orders sent and returned therein.

The charter granted to William Penn in 1681 for the government of Pennsylvania contains practically the same appeal provision that we found in the New York patents. It authorizes the proprietary to establish courts of justice, "Saving and reserving to Us, Our heirs and Successors, the receiving, heareing, and determining of the appeale and appeales of all or any Person or Persons, of, in, or belonging to the Territories aforesaid, or touching any Judgment to bee there made or given." As the New Hampshire commission, written two years prior to this, or in 1679, contains the definite statement that appeals from that colony shall be "unto us, Our heirs and successors, and our and their Privie Councell," appeals, not to the King alone, but to the King in council, were unquestionably intended by the Pennsylvania charter. The fact, moreover, that the customary expression, "to us, our heirs and successors," is found in a colonial instrument issued subsequently to the date of the carefully worded New Hampshire commission of 1679 is further proof that the framers of the New York patents provided in those instruments for appeals to the King in his privy council.

The commission issued to Sir Edmund Andros in 1686 for the government of New England contains, among other instructions, the following in regard to appeals:

And we do further by these presents will and require you, to permit appeals to be made, in cases of error, from our Courts in our said territory and dominion of New England, unto our Governor and Council in civil causes; provided the value appealed for, do exceed the sum of one hundred pounds sterling, and that security be first duly given by the appellant, to answer such charges as shall be awarded in case the first sentence shall be affirmed. And whereas we judge it necessary, that all our subjects may have liberty to appeal to our Royal person, in cases that may require the same, our will and pleasure is, that if either party shall not rest satisfied with the judgment or sentence of our Governor and Coun-

cil, they may then appeal unto us in our Privy Council, provided the matter in difference exceed the real value and sum of three hundred pounds sterling; and that such appeals be made within one fortnight after sentence; and that security be likewise given by the appelant, to answer such charges as shall be awarded in case the sentence of the Governor and Council shall be confirmed, and provided also, that execution be not suspended by reason of any such appeal unto us.

The Massachusetts charter of 1691 contains similar provisions. It stipulates as follows:

And whereas Wee judge it necessary that all our Subjects should have liberty to Appeale to us our heires and Successors in Cases that may deserve the same Wee doe by these presents Ordaine that incase either party shall not rest satisfied with the Judgement or Sentence of any Judicatories or Courts within our said Province or Territory in any Personall Accon wherein the matter in difference doth exceed the value of three hundred Pounds Sterling that then he or they may appeale to us Our heirs and Successors in our or their Privy Council Provided such Appeale be made within Fourteen dayes after the Sentence or Judgement given and that before such Appeale be allowed Security be given by the party or parties appealing in the value of the matter in Difference to pay or Answer the Debt or Damages for the which Judgement or Sentence is given With such Costs and Damages as shall be Awarded by us Our Heires or Successors incase the Judgement or Sentence be affirmed. *And Provided* alsoe that no Execution shall be stayd or suspended by reason of such Appeale unto us our Heires and Successors in our or their Privy Councill soe as the party Sueing or takeing out Execution doe in the like manner give Security to the value of the matter in difference to make Restitucion in Case the said Judgment or Sentence be reversed or annul'd upon the said Appeale.

Such are the actual appeal provisions in the organic laws of the colonies. While direct reference to appeals is not to be found in several of the instruments, the fact that all of the charters, with one exception,[1] contain a provision that the inhabitants of the colonies and their children shall be deemed British subjects, and entitled to all the liberties and immunities thereof, makes it clear that the English government designed that appeals should be allowed to the privy council from all of the charter colonies; and it is exceeding probable that appeals were also allowed from other colonies than those under charters, for all of the colonists enjoyed the rights and liberties of British-born subjects, and, as we have already observed in an

[1] Pennsylvania charter of 1681. Judge Story has drawn attention to the fact that Chalmers, in Annals, I, pp. 639, 658, observes that the clause was wholly unnecessary in this charter, as the allegiance to the Crown was reserved; and the common law thence inferred, that all of the inhabitants were subjects, and, of course, were entitled to all the privileges of Englishmen.

earlier part of the present discussion, the right of appeal was one of the most fundamental in English constitutional law. But we have the authority of distinguished jurists on this point. Blackstone, in speaking of the charter colonies, affirms[1] that they had courts of justice of their own, from whose decision an appeal lay to the King in council; and Judge Story asserts[2] that appeals lay to that tribunal, not only from the highest courts of judicature in the charter governments, but from those in all the colonies.

That the right of the King and council to exercise an appellate jurisdiction over the colonial courts in America was not yielded without a struggle on the part of colonial governments is evident from historical events subsequent to 1680; and to these events we must now briefly refer.

Pitkin, in his Political and Civil History of the United States, is authority for the statements[3] that the Crown did not interfere in the judicial proceedings of the colonies, or claim a controlling power over their judicial tribunals, until about 1680; that prior to this period the general assemblies, in most of the colonies, were the tribunals of last resort, in all civil causes; but that at that time the King and council claimed the right of receiving and hearing appeals from the colonial courts, in private suits. There is strong evidence, however, that the King and council claimed the right of receiving and hearing appeals from the colonies several years prior to 1680. The New York patents of 1664 and 1674, and the New Hampshire commission of 1679, all contain provisions with respect to appeals. But while it is not true that the Crown did not claim a controlling power over colonial courts in America until 1680, it is probable, nevertheless, that until about that time there had been no open denial of the right of appeal by a colonial government, nor, except in patents, any positive declaration by the privy council as to its right to hear appeals from the colonies.

It appears that appeals from the general court of Virginia, consisting of the governor and council, were heard before a joint committee of both houses of the general assembly, the members of this committee from the house of burgesses being

[1] Commentaries, I, p. 108.
[2] Ib., I, p. 108.
[3] Vol. I, p. 123.

in a majority.[1] In a particular case that came before this committee for adjudication, a question arose as to whether those of its members from the council who had previously given their opinion in the general court should again sit as judges with appellate powers. The members from the house of burgesses on this judicial committee insisted that the council members ought not so to act. The committee members from the council, however, asserted this right, and in their claims were supported by the governor, Lord Culpepper. The discussion over this question of judicial authority was carried to such an extent that the governor presented the matter to the attention of the King. Soon after this an order was issued by the Crown that thereafter no appeal should be heard by the general assembly, as such a practice was inconsistent with the laws and practices of England, but that all appeals from the decisions of the general court should be heard and determined by the King in council, with the condition that all such appeal cases should exceed in value £300, and that good security should be given to pay the principal, with all costs and damages.

Soon after this remarkable change in the jurisprudence of Virginia appeals were demanded in some of the other colonies, especially in New Hampshire and Connecticut. These appeals were at first refused by the colonial authorities, but on complaint being made to the King in council peremptory orders were issued to admit them. A concrete case will illustrate the positions taken by the colonial government and by the privy council. An appeal from the Connecticut courts being demanded was refused, the colony justifying its refusal by stating to the King that by the charter the colonists had the sole power of constituting courts and of deciding ultimately in all cases without any reservation of a right on the part of the Crown to revise their decisions. Notwithstanding this firm position of the colony, the King and council, on the petition of John and Nicholas Hallam and Edward Palmes, issued the following order,[2] March 9, 1698:

His Majesty in councill approving of what is proposed by the Councill of Trade in their said representation, is pleased to order that the governor and company of the colony of Connecticutt be required to take care that no

[1] Massachusetts Historical Society Collections, first series, V, p. 139; Pitkin's Political and Civil History of the United States, I, p. 124.

[2] Macqueen, p. 805.

obstruction of the course of justice be practiced or allowed amongst them; but that the respective cases mentioned in the said representation, and any other whatsoever that may hereafter happen upon differences between man and man about private rights, be fairly heard and judged in the proper methods of the courts established in that colony. And in case the petitioners in the aforesaid causes, or any of them, or any other persons, shall think themselves aggrieved by the sentence or sentences which may be there given, they may thereupon be allowed to appeal to his Majesty in councill. And that copies of all records and other proceedings in all such respective cases be transmitted hither, in order to a final hearing and determination thereof before his Majesty in councill. And that in all such cases, the governor and company of the colony of Connecticutt do take notice that it is the inherent right of his Majesty to receive and determine appeals from all his Majesty's colonys in America; and that they do govern themselves accordingly.

Authoritative as was this order, the colony of Connecticut, imagining that the King was taking away its charter rights, still refused to admit appeals, and the governor even went so far as to declare that before an appeal should be allowed "they would dispute the point with His Majesty."[1] A second complaint being made and further orders issued by the King in council, an appeal was finally granted in June, 1701. We are assured by one authority,[2] however, that even as late as 1755 no appeals were allowed to the King in council from Connecticut; that some had been carried to England by way of complaint, but that in all of these there had been no relief except in the case of John Winthrop.

Notwithstanding the explicit directions in the New Hampshire commission of 1679, that colony also resisted for a time the right of the King and council to hear appeals from its courts. Yet New Hampshire appeals were actually received by the King in council, for in the privy council register we read "that on the 22nd of April, 1685, William Vaughan, inhabitant and planter in New Hampshire, entered his appeale against several verdicts and judgments, one fine, and one decree, given against him in New Hampshire aforesaid."

After the English Revolution, the charter colonies were not allowed to continue long in the peaceful administration of their affairs. Their disregard of the navigation acts and their denial of the right of appeal to the King in council in judicial proceedings were, perhaps, the chief causes for hostile sentiment on the part of the British Government. It was a very

[1] Pitkin's Political and Civil History of the United States, p. 125.

[2] Douglass's Summary, II, p. 174.

general opinion in England, also, that the colonies under the charter form of government were seeking to secure their independence. In 1701, therefore, a bill was introduced in Parliament, the passage of which would unite all the charter colonies directly to the Crown, including Massachusetts, New Hampshire, Rhode Island, Connecticut, Maryland, East and West Jersey, Pennsylvania, Carolina, and the Bahama Islands. About this time, the lords of trade, in a letter to the Earl of Bellomont, say that—

> This declining to admit appeals to his Majesty in council is a matter that you ought very carefully to watch against in all your governments. It is an humour that prevails so much in the proprietor's and charter colonies, and the independency they thirst after is now so notorious, that it has been thought fit, these considerations, together with other objections against these colonies, should be laid before the parliament; and a bill has thereupon been brought into the house of lords, for reuniting the right of government in these colonies, to the crown.

The bill, however, was defeated, largely through the efforts of colonial agents who were given a hearing before the House of Lords.

The enemies of the charter and proprietary colonies were not discouraged by the failure of this bill, and continued to enter their complaints before the King and the board of trade. Taking advantage of the just complaints of the inhabitants of Carolina, in regard to the conduct of the proprietors of that province,[1] they succeeded in bringing to the attention of Parliament, in the beginning of the reign of George I, the subject of annulling, not only the charter of Carolina but those of the other colonial governments as well. Once more, however, these efforts were unsuccessful.

This general history of colonial appeals would be incomplete without a brief account of three concrete cases which, though not originating in Rhode Island, illustrate in a striking manner the vital importance which might sometimes attach to a colonial appeal. In these three cases the validity of important colonial laws was brought directly into question, and the record of these cases forms, therefore, a separate and most interesting chapter in our legal history. Let us briefly consider, therefore, the leading facts in connection with Winthrop *v.* Lechmere, Phillips *v.* Savage, and Clark *v.* Tousey.

[1] See Colonial Records of North Carolina, II, p. 121.

The Connecticut case of Winthrop *v.* Lechmere[1] is, perhaps, the most famous of all the American colonial cases, for in this case the validity of colonial law was not only brought into question, but a certain statute was actually set aside by the King in council as being repugnant to the common law of England.

In 1692 Massachusetts passed an act for the settlement and distribution of the estates of intestates. In 1699 the assembly of Connecticut passed a similar act,[2] according to the provisions of which the real estate of an intestate was divided among his children, giving, however, a double portion to the eldest son. General Wait Still Winthrop, son of Governor John Winthrop, of Connecticut, died in 1717 intestate, leaving two children, John Winthrop, and Ann, wife of Thomas Lechmere, the defendant in this case. General Winthrop's landed estates in Connecticut were large, and the administration of them was now committed to John Winthrop. Winthrop, however, claimed all the real estate as his own, holding that he was General Winthrop's sole heir under the common law of England, and that the colonial statute of 1699, by which he would be entitled to two-thirds and his sister to one-third of the estate, was invalid, as being contrary to the higher law of the home country.

Winthrop continuing to hold the entire estate, in 1724 Thomas Lechmere applied to the court of probate of Connecticut, claiming, in right of his wife, a proportion of the real estate left by General Winthrop, and asserting that he was kept out of it by reason of the fact that the administrator had not inventoried and administered the same. Winthrop replied by showing an inventory of the personal estate, claiming that administrators had nothing to do with lands, as they belonged to the heir at law—in this case himself—according to the law of England.

After nearly two years of litigation in the courts of Connecticut and Massachusetts, the superior court of Connecticut,

[1] Connecticut Historical Society Collections, IV, p. 94, note; Massachusetts Historical Society Collections, sixth series, V, p. 496, and VI; Massachusetts Historical Society Proceedings, second series, VIII, pp. 125–137; Massachusetts Historical Society Proceedings, first series, 1860–1862, pp. 66, 67. Professor C. M. Andrews' article, "The Connecticut Intestacy Law," in the Yale Review, November, 1894.

[2] The Connecticut charter gave the assembly the right to make laws, provided they were not contrary to the laws of England.

on March 22, 1725-26, caused the letters of administration granted to Winthrop to be vacated, and appointed Thomas Lechmere and Ann, his wife, administrators of the estate. At the next session of the general assembly Winthrop presented a petition, and declared that he would appeal to the King in council, although by so doing he would ignore the highest court in Connecticut, to which the case should have been carried, according to colonial law. Winthrop's petition being dismissed by the assembly, he entered a most vigorous protest; and the assembly thereupon ordered the sheriff to bring him before the bar of that body to answer for the contempt manifested in the protest. Winthrop, however, escaped in the night, before the sheriff could arrest him, and according to previous threats presented his case to the King in council by petition, claiming that the Connecticut act was contrary to the laws of England. The case was tried before the King in council, and a decree was finally issued by that tribunal, on February 15, 1728, declaring the Connecticut law entitled "An act for the settlement of intestate estates" null and void, as being repugnant to English law, reversing the decisions of the Connecticut courts and giving the whole of the real estate to John Winthrop.

Reversing, as it did, the policy of distributing and settling intestate estates which had prevailed in Connecticut from the beginning of its history, and thus affecting every person in the colony, the order caused great alarm. But not in Connecticut alone was there consternation at this sudden overturning of established conditions. Other New England colonies had intestate laws and practices similar to those of Connecticut, and no one could tell how soon these would also be subverted by the King and council. The issues presented by this case were so important to all of the colonists that the government of Connecticut at once made active and strenuous efforts to secure a reversal of the privy council's decision. During the pendency of negotiations for the effecting of this end, a Massachusetts case, similar to Winthrop *v.* Lechmere, was carried to the King in council for final adjudication. This was the case of Phillips *v.* Savage.[1]

Henry Phillips, of Boston, killed Benjamin Woodbridge in a duel on the Common July 3, 1728, and at once fled to France. He died there about a year afterwards, intestate, leaving his

[1] Massachusetts Historical Society Proceedings, first series, 1860-1862, pp. 64-80, 164-171.

mother, two sisters (one the wife of Habijah Savage and the other the wife of Arthur Savage), and the children of a deceased sister, Mrs. Butler. Administration on his estate, appraised at £3,950, was granted, July 17, 1730, to his brother, Gillam Phillips. On April 6, 1733, the judge of probate for Suffolk County issued a warrant to five freeholders, by which they were directed "to make a just and equal division, or partition, of the estate, in housing and lands, whereof Henry Phillips, late of Boston, gentleman, deceased intestate, died seized and possessed, between his mother, brother, sisters, or their legal representatives, in five equal parts or shares." The freeholders so appointed performed the service as thus directed, and made report on May 11, 1733. On May 15 following the judge of probate allowed and confirmed their action, in probate court.

On October 18, 1733, Gillam Phillips appealed to the governor and council from this decree of the judge of probate confirming the action of the committee of freeholders, which he insisted was wrong and erroneous, for he, Gillam Phillips, as the only brother of the deceased, was his heir, by the common law of England. On November 2, 1733, there was a hearing of the case before the governor and council. This tribunal affirming the decree of the judge of probate, Phillips, on November following, presented a petition to the governor and council, praying to be allowed an appeal from their decision to the King in council. The petition was dismissed by the governor and council, but by an order of the King in council, February 12, 1734, Phillips was permitted to appeal from the order of the judge of probate of April 6, 1733, issuing the warrant to the committee of five freeholders to divide the real estate; from the order of the judge of probate of May 15, 1733, allowing and confirming the return of the committee; and from the order of the governor and council of November 2, 1733, affirming the decree of the judge of probate. The case was tried before the privy council on January 13 and 16, 1738. The orders or decrees appealed from were affirmed and the appeal dismissed.

The question at issue in both of these cases was exactly the same—the validity of the colonial statutes—and there can be no doubt that the laws regarding intestate estates, both in Connecticut and Massachusetts, were contrary to the common law of England. It seems strange, therefore, that we should find the privy council deciding so differently in the two cases. But

the reason is here. The Massachusetts charter empowered the colony to make and establish laws, provided they be not contrary to the laws of England, requiring also that these colonial laws be sent over to be approved or disallowed by the King in council. The Massachusetts act of 1692, providing for the settling of intestate estates, being thus transmitted to the Crown, was solemnly confirmed by an order in council; and in pursuance of the powers specified in this order, the governor, council and assembly of the colony passed several explanatory acts in 1710, 1715, and 1719, which were not disallowed by the Crown. Again, in 1695, the act of 1692 was specially confirmed by the then lords justices in council. The Connecticut charter, however, contained no provision in regard to sending over colonial laws for the approval or disallowance of the Crown. When the Connecticut appeal came before the King in council, therefore, they were left free to decide, untrammeled by any previous confirmation of the law in question. But when the Massachusetts appeal was presented to His Majesty in council, they were necessarily compelled to take into consideration their past action in regard to the colonial statutes. This, it is believed, is the explanation of an apparent inconsistency in the action of the privy council with regard to these two cases.

The decision of the privy council in the case of Phillips *v.* Savage greatly encouraged the people of Connecticut in their efforts to secure the reestablishment of their intestate law. The opportunity of presenting the law to the King in council for a second judgment upon its validity finally came in a private appeal case, Clark *v.* Tousey.[1]

In 1742 Samuel Clark appealed to the King in council for the recovery of certain lands in Connecticut which he demanded as heir at law according to the English laws of descent, but which had been settled upon Thomas Tousey, of Milford, according to the ancient laws and customs of the colony. Tousey stated to the general assembly that he was obliged to go to England to defend this suit, and, realizing that it involved the old question at issue between the colony and the home Government, the assembly voted that the sum of £500 should be loaned to Mr. Tousey to aid him in the suit. In October following, the colonial agent, Eliakim Palmer, was instructed to employ solicitors in Tousey's defense and to assist him

[1] Connecticut Historical Society Collections, IV, p. 94, note.

further in anyway possible. These combined efforts to secure a reversal of the privy council's decision in the case of Winthrop *v.* Lechmere were finally successful. Clark's appeal was dismissed by an order in council, July 18, 1745. At last the validity of the act of 1699 was established.

It is now time to turn our attention to appeals from Rhode Island. Inasmuch as colonial courts were very closely associated with the history of the practice of appealing to England, a few words must be said in regard to the Rhode Island judiciary. After even a cursory glance at the colony's judicial system, we shall obtain a much clearer understanding of English regulations, colonial legislation, and concrete cases.

The first settlers of Rhode Island established four separate communities, Providence in 1636, Portsmouth in 1638, Newport in 1639, and Warwick in 1642.[1] Prior to 1647 each of these communities, with the exception of Warwick, had its own form of government and consequently its own judiciary. The Warwick settlers believed that they had no right to create a government for themselves, and remained, therefore, without a judiciary.

In 1647, however, there was introduced a new judicial system, through the union of the four towns under the first charter and the enactment of a code. The chief officers of government under the charter of 1647 were a president and four assistants, who were chosen from among the freemen by their several towns, one assistant from each town. To these officers was also committed the duty of holding twice each year the general court of trials, which was the supreme court in the colony for the administration of justice. The general court had original jurisdiction in all important cases and in all matters of judicial cognizance not referred to town or local courts, and, at least after 1650, exercised an appellate or revisory jurisdiction over these latter tribunals.[2] This system, however, was not satisfactory to the colonists, for "in 1651 it was enacted that

[1] On the colonial judiciary, see Durfee's Gleanings from the Judicial History of Rhode Island.

[2] Town councils were from the first courts of probate. In 1663 the probate jurisdiction was fully committed to them, with an appeal to the governor and council as supreme ordinary or judge of probate. By an act of 1718 (Public Laws of Rhode Island, digest of 1719, p. 95) appeals from the judgments of town councils were heard by the governor and council, where a "final judgment" was rendered.

all causes, except prosecutions for certain crimes of the highest grade, should be tried in the first place in the town courts, the general court being thus converted into a court of appeal or review. The system as thus modified remained in force, except as it was interrupted by Coddington's usurpation, until 1663, when the royal charter of Charles II was received."

The charter of 1663 did not create judicial tribunals, but authorized the general assembly[1] to "erect such courts of justice, for determining all acts within the colony, as they should think fit." Accordingly, the general assembly at its first session under this new charter conferred magisterial functions upon certain of the legislative officers, by providing that either the governor or the deputy governor, with at least six assistants, should hold the general court of trials at Newport every year in May and October.[2] Durfee says that "the act constituting the superior court," or the court we have just referred to, "did not define its jurisdiction; but, as the charter continued in force all statutes not repugnant to the laws of the realm, it may have been understood that the old system survived and that the court, as newly officered, was a continuation of the former court of the same name. This, however, is not clear. * * * The old court became, as we have seen, mainly a court of appeals, whereas the new court appears to have exercised more original jurisdiction. * * * The reader, therefore, who tries to form a clear conception of the system will probably not succeed. He will not be able to determine with certainty the jurisdiction of the several courts; nor their relations to each other; nor by what procedure causes were carried from the lower to the higher, and correction was transmitted from the higher to the lower tribunals."[3]

The general assembly, at the May session, 1666, passed an act[4] for the calling of special courts, which is of peculiar

[1] Composed of governor, deputy governor, ten assistants and a body of deputies.

[2] The terms were subsequently changed to March and September, as it was found that the sessions of the court interfered with the sessions of the general assembly.

[3] In regard to the jurisdiction and procedure of the superior court, or more properly the general court of trials, see further the "Report of the Earl of Bellmont on the irregularities of Rhode Island," Boston, November 27, 1699, in Rhode Island Colonial Records, III, p. 385, and Governor Cranston's letter to the Board of Trade, December 5, 1708, in Rhode Island Colonial Records, IV, p. 56.

[4] Public Laws of Rhode Island, Digest of 1719, p. 17.

interest as being the first legislative enactment that we have been able to find containing reference to privy council appeals from courts of the colony. This act of 1666 recites that whereas it often happens that merchants, sailors and other persons who are not permanent inhabitants of Rhode Island, when they come to the colony to trade and transact their business affairs, either sue or are sued in personal actions; that whereas injustice is done to these persons by reason of their being detained, often for a long time, until the usual courts of trial shall determine such causes; and that whereas, also, this long period of waiting is occasioned many times through malice of the other parties, who desire to hinder them from proceeding on their voyage; the governor and deputy governor are in such cases to call special courts, which shall consist of the governor, and in his absence of the deputy governor, and three or more assistants of the colony. The decisions of such special courts shall be final, "saving only to the party aggrieved the liberty of appealing to His Majesty in council in England, as in other cases is usually allowed."

During the period of Governor Andros's administration of New England affairs, the judicial system of Rhode Island was modified to meet the altered political conditions. As in the case of the other colonies constituting the colony of New England, appeals from the courts of Rhode Island lay, in civil causes, to the governor and council, and from that tribunal to the King in council.[1] On the resumption of the charter in 1690, the judicial system in vogue previous to 1686 was reestablished.[2]

An important change in the judicial system occurred in 1729, when the colony was divided into three counties, Newport, Providence, and King's, and a criminal and a civil court established for each county. The criminal courts were designated as courts of general sessions of the peace, and consisted of the justices of the peace in each county, any five of them being a quorum. These courts had "original jurisdiction, subject to appeal to the higher court, of all crimes not capital, and appellate jurisdiction of all such petty offenses as were triable by justices of the peace." The civil courts were denominated courts of common pleas, and were each held by "four judi-

[1] See Governor Andros's commission of 1686.

[2] Act of May, 1690. See Rhode Island Colonial Records, III, p. 268.

cious and skillful persons," chosen by the general assembly from the counties in which they were to act. The jurisdiction of the courts extended, subject to appeal to the higher court, to "all civil actions arising or happening within such county triable at common law, of whatever nature, kind, or quality soever." The higher court in the colony now became known as "the superior court of judicature, court of assize, and general gaol delivery," and its jurisdiction in civil, and for the most part in criminal, matters became purely appellate, although with as full powers in this respect as the court of common pleas, King's bench, or exchequer in England.[1] The act of 1729,[2] establishing the system just described, provides that—

> The Judgment and Determination of said Superior Court shall be a final Issue and Determination of all causes there Tryed, excepting only, and saving an Appeal to the General Assembly in all Personal Actions, and from thence to the King in Council, where the Matter in controversy will admit thereof, and an Appeal directly to the King in Council in all Causes not Cognizable before said Assembly, that by Law will admit the same.

Judge Durfee is of the opinion that "the system as thus revised was complete, clearly defined, and doubtless well suited to the need of the colony," except in the two particulars, that the superior court continued to be held by the governor, or deputy governor, and the assistants, and that it continued to be held exclusively at Newport.

The disadvantages incident to these particulars finally occasioned a radical change in the judicial system through the passage of the act of February, 1747.[3] In place of the governor, or deputy governor, and ten assistants, there were to be five judges, a chief and four associates, any three being a quorum. They were to be chosen annually by the general assembly, and commissioned by the governor, to hold the court. Provision was also made for two sessions a year in every county throughout the colony. The act concludes by stating that this court "is hereby empowered to make up judgment in all such continued actions as aforesaid, and award execution thereon, excepting where there shall be an appeal to His Majesty in council, agreeable to law."

Our sketch of the Rhode Island judiciary would be incomplete without some account of the exercise of judicial functions

[1] Douglass's Summary.

[2] Public Laws of Rhode Island, Digest of 1730, p. 192.

[3] Public Laws of Rhode Island, Digest of 1752, p. 27.

by the general assembly; for from the very first the assembly appears to have regarded itself a judicial tribunal as well as a legislative body, and during practically all of the colonial period exercised an appellate jurisdiction over colonial courts, granting or refusing also appeals to the King in council.

Neither the charter of 1647 nor that of 1663 conferred upon the assembly the large judicial powers which it assumed; the charter of 1663, as already noted, merely directing that the assembly was "to erect such courts of justice for determining all acts within the colony, as they should think fit." In 1647, under the first charter, the assembly passed an act[1] declaring that "in case any man sues for justice against an officer or other, and he can not be heard, or is heard and can not be righted by any law extant among us, then shall the party grieved petition to the General or lawmaking Assembly, and shall be relieved." That the assembly, under the charter of 1663, did not assume these powers without some apprehension is evident from the action of that body itself; for in 1678 it refused to interfere with a decision of the general court of trials in the case of Forster *v.* Sanford, affirming that "this Assembly conceive that it doth not properly belong to them or anywise within their recognizance to judge or to reverse any sentence or judgment passed by the General Court of Tryalls, according to law, except capitall or criminall cases, or mulct, or fines."[2] Yet, notwithstanding this plain declaration as to its lack of judicial power, the assembly two years later, or in 1680, greatly extended its own appellate jurisdiction by granting the right of appeal to any party in any "actional case" who should be aggrieved by a decision of the general court. In 1699 the Earl of Bellomont was instructed by the lords of trade and plantations to inquire concerning the conduct of Rhode Island in certain matters. In his report Bellomont declares that "the General Assembly assume a judicial power of hearing, trying and determining civil cases, removing them out of the ordinary courts of justice, and way of trial according to the course of the common law, alter and reverse verdicts and judgments—the charter committing no judicial power or authority unto them." Regardless of this report, as well as of the sentiment of the authorities in England, which was

[1] Proceedings of the First General Assembly and the Code of Laws of 1647, p. 61.

[2] Rhode Island Colonial Records, III, p. 19.

antagonistic to the policy pursued by the legislative branch of the Rhode Island government, the assembly enacted, in 1705, that "the General Assembly, at all times convened in general assembly, shall be a court of chancery, as formerly it hath been, until such time as a more proper court may be conveniently erected and settled." The privy council declaring in 1710 the decision of the assembly in the appeal case of Brenton *v.* Remington null and void for want of jurisdiction, the assembly itself finally came to the conclusion that it had no charter power to constitute itself a court of review, affirming that it could not "find any precedent that the legislators or parliament of England, after they had passed an act or law, took upon themselves the executive power or authority of constituting themselves a court of chancery or any other court of judicature." In February, 1712, therefore, the assembly erected a court of chancery to hear appeals, though, strangely enough, still continuing to exercise its former appellate jurisdiction by means of petition. In 1741, however, it established a court of equity to hear and determine all appeals in personal actions from the judgments of the superior court. The act[1] constituting this court declares that "the judgment and determination of said court shall be final, saving an appeal to His Majesty in council in those cases wherein the law hath already provided." But the act of February, 1743,[2] abolished this court, and provided for an action of review[3] in the superior court, declaring, furthermore, "that execution shall not be stayed or suspended by reason of any such action of review; and that any judgment given in any action of review shall no ways hinder the party aggrieved thereat to appeal to His Majesty in council in all cases where the law of the colony permits and allows the same." But it is probable that after the passage of this act of 1743, and even after the establishment of the new superior court in 1747, the general assembly exercised appellate powers; for in the case of Pearce *v.* Rice, 1752,

[1] Act of May, 1741. See Rhode Island Colonial Records, V, p. 22.

[2] Rhode Island Colonial Records, V, p. 76; Public Laws of Rhode Island, Digest of 1745, p. 282.

[3] An act of 1732 provided for review in real actions relating to titles of land, and stipulated that "Judgment on Review shall in no ways hinder the Party Aggrieved with such Judgment to appeal to His Majesty in Council in Great Britain in all Cases where the Law of the Colony permits and allows the same." (See Public Laws of Rhode Island, Digest of 1730, p. 247.)

the assembly allowed an appeal to England from the superior court, and directed that tribunal accordingly.

In hearing and determining appeals the two houses of the assembly resolved themselves into a grand committee (joint session),[1] each case being tried on all the issues, the assembly itself acting as triers both of law and fact.[2] At the conclusion of the trial the vote of this grand committee decided whether the decision of the court below should be affirmed, reversed, or "chancerized" by mitigating the damages. If either party was dissatisfied with the decision of the assembly and wished a further trial in England, he at once, usually through his attorney, moved for an appeal to the King in council. The assembly thereupon decided whether such an appeal should be allowed or refused. When appeals were allowed, the assembly usually stipulated that the law in such cases must be complied with. In some appeal cases tried before the assembly the damages were chancerized to a sum below that required for an appeal to England; and on request for such appeal from decisions of the general assembly the appellants were usually refused. In one case of which we have record damages were chancerized by the assembly, from £500 to £15, and an appeal to England was then refused because the sum involved was less than £300.[3]

As already indicated the assembly not only allowed appeals from its own decisions, but from those of other colonial courts. In February, 1712, a petition was presented to the assembly by Captain Samuel Greene, attorney to John Knight, requesting that an appeal to England might be granted the said Knight from a decision of the court of trials in his suit with John Babcock concerning lands in the Narragansett country; and the assembly thereupon "enacted" that Greene should be allowed so to appeal, if he complied with the law in such cases.[4] In 1752 it granted an appeal from the superior court in a case to which we have just referred. In June of that year it was—

Voted and Resolved, That the Superior Court of Judicature of this Colony, be, and they are hereby directed to permit John Pearce and Thomas Pearce to appeal to His Majesty in Council, from a Judgment obtained

[1] Rhode Island Colonial Records, IV, p. 157; V, p. 80.

[2] Durfee's Gleanings from the Judicial History of Rhode Island, p. 37.

[3] Rhode Island Colonial Records, IV, pp. 268, 269.

[4] Ib., IV, p. 138.

against them by John Rice, agreeable to the Orders of his said Majesty in Council, now before this Assembly: Any Law of the Colony to the contrary hereof, notwithstanding. *And it is farther Voted and Resolved*, That the Superior Court meet in the County of Kent on Tuesday the sixteenth Day of this Instant June, for the Purpose aforesaid: And that the said John Rice be notified thereof, and served with a Copy of this Act, together with a Copy of said Order of His Majesty in Council.[1]

The assembly also exercised an authority over colonial courts in the matter of carrying into effect the decisions of the King in council in cases appealed from the colony. In 1767 George Rome, in behalf of William Stead, of London, presenting to the assembly two decrees of the King in council deciding in favor of the said Stead in his suit against Isaac and Naphtali Hart and Isaac Elizer, prayed that the assembly, to whom the decrees were directed, would instruct the superior court to order them put in execution at a special meeting of the said court, to be held the following Tuesday. This the assembly refused to do, on the ground that such proceedings in the superior court would be out of the regular term of that tribunal. Later in the same session of the assembly, however, it was voted and resolved that "in conformity to the rule and practice of this colony in such cases, that the superior court be, and hereby is, directed at the next term to take the subject-matter of the said decrees into their consideration, and order them immediately into execution, upon their being presented to said court."[2]

Rhode Island legislation regulating appeals begins with the act of 1706,[3] which provides that—

On all appeals by any person in said Collony to England, to her Majesty in Councill, bond for the prosecuting all said appeals shall be given to the Governor and Councill, to prosecute said appeals according to the time given and agreed on by the Governor and Councill, for all persons that shall have appeal allowed them; and the appelee shall be cited to appear in England before her Majesty and Councill to answer.

Although in 1689 governors were instructed not to allow an appeal to the Crown unless the matter in controversy amounted to £500, many cases of "very small moment," in which persons of little means were compelled to lose their rights through inability to defend them, were appealed to the

[1] Rhode Island Acts, Resolves, and Reports, May, 1750–March, 1755, p. 24.

[2] Rhode Island Acts, Resolves, and Reports, May, 1765—October, 1770, p. 44.

[3] Rhode Island Colonial Records, III, p. 562.

King in council from the colony.[1] At the October session of the assembly in 1718, therefore, the recorder was directed to draw up an act regulating appeals; and at an adjourned session in June, 1719, it was enacted[2] that no person or persons be allowed to appeal to England, unless the matter or thing in controversy amount to three hundred pounds, current money of the colony, to be valued by the court where the appeal shall be prayed.

The two acts just cited formed the colonial legislation in regard to privy council appeals until 1746. In this year the act of 1719 was repealed, as it was found that under its provisions appeals were still carried to England in matters of too small value; and it was enacted[3] that for the future any person or persons aggrieved by a decision of the superior court should have the liberty of appealing to the King in council where the matter or thing or controversy was of the value of £150 (sterling), and in no other case whatsoever, the superior court where the appeal was prayed being empowered to ascertain the value of said appeal. In 1747, or one year after the passage of this act, Parliament resolved to reimburse the colonies for their outlay in the expedition that resulted in the capture of Louisbourg. Rhode Island received at that time £7,800 sterling, with which the committee in charge of the matter redeemed £88,725 of the colonial bills of credit.[4] We thus see that £1 sterling was equal to about eleven pounds in current money of the colony. About the time of the passage of this act, therefore, £150 sterling were equal to about £1,650 in current money of the colony; and by changing the sum for which an appeal should be allowed from three hundred pounds current money of the colony, under the act of 1719, to £150 sterling, the assembly increased the legal requirement about five and one-half times.

Four years after the enactment of the statute of 1746, or at the October session of the assembly in 1750, a supplementary act was passed, according to the terms of which—

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[1] Preamble of act of 1719.

[2] Public Laws of Rhode Island, Digest of 1730, p. 106.

[3] Public Laws of Rhode Island, Digest of 1752, p. 30. Appeals to England caused the printing of this Digest of 1752. (See Rhode Island Colonial Records, V, p. 355).

[4] See Rhode Island Historical Tracts, No. 8, pp. 63–67. This tract, by Judge Potter and Mr. S. S. Rider, gives an account of Rhode Island paper money from 1710 to 1786.

No defendant in any suit of law in this colony, the foundation whereof, being a bond conditioned for the payment of money only, shall have leave to appeal from the judgment of such court, where such action shall be tried, to His Majesty in council; but that the last judgment of the superior court of judicature, in this colony, as trials now stand, regulated by the laws of this colony, shall in all such cases be final. And furthermore, that in all appeals to His Majesty in council, from this colony, if the appellant doth not obtain a reversal of the judgment appealed from, or fails in prosecuting such appeal, the appellee, in such case, may, by action of the case, recover all just and reasonable costs and damages.

Perhaps the most comprehensive and important Rhode Island legislation in regard to appeals is contained in the act of 1764.[1] It appears that even after the passage of the act of 1746 cases of small value were appealed to England, and in order to prevent such appeals in the future the assembly passed this act of 1764. It recites that no person shall be allowed to appeal from the decision of the superior court to His Majesty in council unless the matter or thing in question be of the value of £200, lawful money, to be valued by the court where the appeal shall be prayed; and that whoever shall thus appeal to the King in council shall give bond to the superior court or to the clerk thereof, before the rising of the same, with a good surety or sureties, to be approved by the said court, in the sum of £250, lawful money, for the effective prosecution of the appeal, or, in default thereof, to pay to the appellee all costs and damages which he, the aforesaid appellee, shall sustain by reason of such appeal not being prosecuted with effect. The act further recites that, whereas by former laws of the colony regulating appeals to the King in council bond was not required of the appellee to secure to the appellant his costs upon a reversal of the colonial decision, the appellant might, notwithstanding such reversal and His Majesty's order in council, be defeated of his rights, in that the appellee may, before the final determination of the cause, be rendered insolvent or be removed out of the colony, so that neither his body nor estate can be found. To remedy this evil it is required that the appellee, before he shall be permitted to receive a copy of the case from the clerk of the superior court, shall give bond in the said clerk's office in the sum of £250, lawful money, with a good surety or sureties, to pay unto the appellant all such costs and charges as he shall sustain if the decision of the colonial court be reversed by the King in council. The statute concludes by

[1] Public Laws of Rhode Island, Digest of 1767, p. 10.

stating that no defendant, in any suit whose foundation is "a bond conditioned for the payment of money only," shall have the liberty of appealing from the colonial court to the King in council, but that the last judgment of the superior court shall be final; and by providing that an appeal shall not stay or suspend execution in favor of the party obtaining a final decision in the colony, provided such party, at the time of taking out his execution, give bond into the office of the court, with two good sureties, to refund whatever shall be lawfully levied and taken in consequence of such execution.

It will be observed that this act designates £200, lawful money, as the sum below which no appeal is to be allowed. In 1764 gold and silver coins were the only lawful money in Rhode Island,[1] and the colonial standard of value was practically the same as that of the home country, a pound of English money having a slightly greater purchasing power than the colonial pound. By increasing the sum below which no appeal was to be allowed from £150 sterling, under the statute of 1746, to £200, lawful money, under this act of 1764, the assembly in reality raised the legal requirement something less than £50 sterling.

A statute of 1768[2] further regulates appeals by providing that whenever an appeal is prayed for and granted from the decision of the superior court, it shall be lawful for the judges of the said court, when the appellant is absent at the time the appeal is allowed, to accept bond of any other person, appearing in behalf of such appellant, whom the said judges shall regard of sufficient estate in the colony, with such other sureties as the court shall deem sufficient, in the same manner as if the party appealing was present himself in court to give bond. The act of 1769[3] stipulates that whenever an appeal to the King in council is allowed, and bond given by the appellant for prosecuting the same according to law, there shall be no review of the cause in the colony; and furthermore, that if such writ of review shall be taken out, the court to which the same is brought shall "ex-officio" bar it and award the defendant his costs. According to the law of 1771[4] no appeals from the superior court were to be allowed unless the matter

[1] See Rhode Island Historical Tracts, No. 8, pp. 97-100.
[2] Public Laws of Rhode Island, Digest of 1772, p. 8.
[3] Ib., p. 17.
[4] Ib., p. 38.

in controversy amount to £300, lawful money, to be valued by the court where the appeal was prayed.

In June, 1775, the "Act for regulating appeals to His Majesty in council, in Great Britain," was repealed;[1] and in May, 1776, it was enacted that the courts of law of Rhode Island be no longer entitled or considered as the King's courts.[2] With these two acts ends the legislation of the Rhode Island assembly in regard to appeals to England, the acts themselves abrogating the appellate jurisdiction of the King in council over the courts of the colony.

On the accession of James II to the throne of England in 1685, the inhabitants of Rhode Island immediately transmitted an address to the King, in which they acknowledged themselves his loyal subjects, professed obedience to his power, and begged protection to their chartered rights. Even this evident humility, however, could not save the colony from the plan of reform for New England; and in the same year as the transmission of this address Edward Randolph exhibited seven articles of high misdemeanor against the governor and company of Rhode Island to the lords of the privy council's committee on plantation affairs. These charges were referred in July, 1685, to the attorney-general, with orders to issue a quo warranto against the Rhode Island patent. But the colony refused to stand suit with the King and gave up its charter, Sir Edmund Andros being appointed soon after to govern its affairs.

In the first of these seven articles of high misdemeanor Randolph charged that the governor and company of Rhode Island denied appeals to His Majesty; and in Sir Edmund Andros's account of his administration and imprisonment to the council's committee on trade and plantations[3] it was asserted that the colonies of New England, and among them Rhode Island, neither admitted English laws to be pleaded nor allowed appeals to the King in council.[4] On March 26, 1705, the privy council itself preferred several charges against Rhode Island, the eighth article being that the colony denied

[1] Rhode Island Colonial Records, VII, p. 355.

[2] Rhode Island Acts, Resolves, and Reports, May, 1776—April, 1777, p. 22.

[3] This committee was variously known as the committee on plantation affairs, the committee on trade and plantations, and the committee on hearing appeals from the plantations.

[4] Rhode Island Colonial Records, III, p. 284.

appeals. Governor Cranston, in a letter to the board of trade, May 27, 1699, asserted that Edward Randolph, who was in the employ of the royal customs commissioners, publicly declared that he would be the means of depriving the colony of its privileges; "and we know," the governor concluded, "he picked up several false reports against us."[1] In reply to the privy council's charges, the colonial officials declared, August 28, 1705, that they had not refused to allow appeals, when duly applied for and the value of the matter in controversy required the same.[2] It was further averred that, for want of instructions in the case, they had granted an appeal for the value of £20, which, "with humble submission," they conceived to be "frivolous and vexatious."

Notwithstanding these denials by the colonial government, Governor Dudley wrote the board of trade on November 2, 1705, with charges against Rhode Island, the seventh article being that the colony had refused to allow appeals to Her Majesty in council, and gave great vexation to those who demanded the same.[3] Lord Cornbury also wrote the board of trade on November 26, 1705, in regard to the charges against Rhode Island, and asserted that they had denied appeals.[4] In support of his charge, Governor Dudley brought forward two affidavits, now in the public record office in London, one affirming that at a court of trials held at Newport, in September, 1704, the request of John Saffin and others for an appeal to England "in the cases of Mr. Elisha Hutchinson and others, his partners, against John Fones and Aron Jaques" was refused, on the ground that the plaintiffs should have a rehearing in another court before the appeal be granted, the governor, however, entering his dissent from this opinion of the court. In the other affidavit James Menzies, on October 12, 1705, being called and examined in the presence of Governor Dudley, testified and declared that "the government and courts of the colony of Rhode Island have frequently refused appeals to the Queen's Majesty and the late King William in councill as in the case of Brinley *vers.* Dyer and Brenton *vers.* Walley."[5] In proof of Cornbury's charge, he himself cited

[1] Rhode Island Colonial Records, III, p. 375.
[2] Ib., III, p. 548.
[3] Ib., III, p. 543.
[4] Ib., III, p. 545.
[5] MS. copies in private hands.

the case of Major Palmes—who was even then, November 26, 1705, going to England to make his complaint—and referred to the oath of James Fitch and Samuel Mason. From an examination of all the sources at hand nothing further can be found in regard to the particular cases mentioned in these letters and documents, with the possible exception of a reference in a report on the irregularities of Rhode Island[1] which the Earl of Bellomont submitted to the home government on November 27, 1699. In this document Bellomont asserts that "they are willfully negligent and refuse to comply with or obey the King's commandments sent unto them; particularly, they are complained of by Mr. Brinley and Nathaniel Waterman, for not observing the King's orders, relating to some trials, had within the courts within that colony, wherein they were concerned." It is impossible to say whether reference is here made to the case of Brinley *v.* Dyer which was mentioned in one of the affidavits just cited. Even if it does not so refer, however, the earl's statement is of interest in connection with the matter under consideration. But it should be further remarked that in this report there is no direct assertion in regard to the denial of appeals by the colonial courts, the only possible reference to such denial being contained in the earl's remarks, just quoted, with regard to the complaints of Brinley and Waterman.

As a result of the charges preferred against the New England colonies the board of trade, in a representation[2] to Queen Anne in regard to Massachusetts, Rhode Island, and Connecticut, January 10, 1706, asserted that "divers of them have denied appeals to Your Majesty in council, by which not only the inhabitants of these colonies, but others Your Majesty's subjects are deprived of that benefit enjoyed in the plantations under Your Majesty's immediate government, and the parties aggrieved are left without remedy against the arbitrary and illegal proceedings of their courts." While this representation, in referring to Connecticut, states that "they have refused to allow of appeals to Your Majesty in council, and give great discouragements and vexation to those that demand the same," specific references to Massachusetts and Rhode Island contain no claim in regard to denial of appeals.

[1] Rhode Island Colonial Records, III, p. 385.
[2] Ib., IV, p. 12.

While it is impossible to discuss this interesting question further at the present time, it must be admitted that from the evidence thus far obtained there can be no doubt that Rhode Island did actually evade appeals in some cases; but that the courts of the colony went to the length of plain refusal, as stated in certain of the charges, is at least questionable. Undoubtedly the court of trials held at Newport in September, 1704, evaded an appeal in the case of Hutchinson et al. *v.* Fones and Jaques by deciding that the parties should have a rehearing in the colonial court, for at that time there was no law of the colony in regard to a positive rehearing, cases being retried before the same judges, who would very rarely indeed reverse a former decision made by themselves. Without doubt, too, the power assumed by the assembly of chancerizing, or mitigating, the damages assessed by other colonial courts, enabled that body to evade in some cases the necessity of allowing an appeal from its own decision. If the assembly anticipated that an appeal might be demanded from its decision, it could chancerize the damages to a point below the sum required for an appeal to the King in council;[1] then, if the appeal were actually demanded, the assembly could very gracefully decline to grant it on the ground of illegality. But whether or not the courts of Rhode Island did really deny appeals in cases where legally they should have granted them, the following considerations will be of interest as showing, among other things, that no record has been found of an appeal granted by a Rhode Island court prior to or during the period when the charge of denial was preferred against the colony.

Indeed, although a letter written by Roger Williams to the town of Providence in 1654 refers to certain citizens who were "zealously talking of undoeing themselves by a tryall in England," and although the wording of the act of 1666 indicates that appeals to the King in council were frequently allowed even at that early day, the writer has been unable to find in the records of Rhode Island courts an appeal case prior to 1706.[2] Between that date and 1776 we find in Rhode Island

[1] The instructions of 1689 specified that the sum in controversy must amount to £500.

[2] The case of William Harris, 1677–1679, appears not to have been precisely a case of judicial appeal.

official record of 7 appeals granted by the general assembly[1] and 10 granted by the superior court for Providence County. Beside these we have authentic record of at least 3 other cases appealed from the superior court of the colony.[2] An official examination of the privy council register, however, recently made for the writer by Thomas Preston, esq., librarian to the privy council, and extending from 1675 to 1776, discloses 59 Rhode Island appeal cases decided by the King in council, the first there recorded being of the year 1735. Of these 6 are among the 20 of which we find record in Rhode Island. Under date of December 8, 1894, Mr. Preston writes that, although there were a few petitions prior to 1700 as to disputed boundaries of estates, there is no regular or judicial appeal entered earlier than 1735. It is natural to conclude, therefore, that the cases appealed prior to 1735 and some subsequently to that date were either not prosecuted or not finally adjudicated by the King in council.[3]

It may not be without some interest at this point to note what decisions were made by the King in council in the 59 Rhode Island cases adjudicated by that tribunal between 1735 and 1776. Twenty-two of these appeals were dismissed for non-prosecution, one of them being afterwards reaffirmed. In 15 the decisions of the colonial courts were reversed, and in two of these the council sent directions to the lower tribunal. In 11 the decisions of the colonial courts were affirmed. Six previous decisions were varied, one of them chiefly as to the rate of interest on bills of credit for £28,179, the damages in another being reduced, a peremptory order issued in a third, and two of the remaining three being remitted. In one both

[1] Two of these were appeals, not from decisions of the assembly, but from other courts; one from the general court of trials and the other from the superior court. See remarks on the procedure of the general assembly in a previous part of this paper.

[2] Cases in regard to the church lands at South Kingstown.

[3] It should be remembered, however, that Mr. Preston states merely what there is on record at the privy council office, i. e., what is the earliest thing there, not what was absolutely the first. Several of the appeals granted by Rhode Island courts prior to 1735 may have been adjudicated by the King in council, although not recorded in the privy council register. One such case, Torrey *v.* Mumford, 1734, will be refered to later. Some of the cases appealed subsequently to 1735, and of which we can find no record in the register, may possibly also have been decided by the King in council.

the appeal and the cross appeal were dismissed; one was referred back to the colonial court with special directions; the verdict in one was set aside and a new trial in the colony directed; one was simply dismissed; and in the remaining one a peremptory order was issued to the colonial judges to carry out the council's decision in a previous suit by the same parties.

Before reviewing individual cases it will be instructive to make a few introductory comments upon the action of Rhode Island courts in the matter of observing legal requirements in regard to allowing appeals.

Prior to the passage of the act of 1719 the general assembly granted at least one appeal where the matter in dispute was not of the legal value. The instructions of 1689 specified that the sum involved must equal £500; but the assembly in 1715 granted an appeal in the case of Chapman and Norton *v.* Rouse,[1] where, in an action for trespass, the amount of damages claimed was only £100, current money of New England.

The colonial acts of 1719, 1746, 1764, and 1771 specified that no appeal should be allowed where the matter in controversy was below a certain prescribed value, and granted to the court where the appeal was prayed the power of determining whether the mattter involved amounted to the legal requirement. That the power thus conferred upon colonial courts was put into actual practice may be proved by concrete examples. The general assembly, in the exercise of its functions as a court of justice, refused several appeals on the ground that the matter in dispute was not of the value required by law. Among such cases were Brenton *v.* Mott and Freebody *v.* Whipple, in 1720, and Brenton *v.* Stanton, in 1728.[2] Between 1747 and 1776 the superior court for Providence County refused eight appeals for the same reason.[3]

According to the act of 1706 the appellant was required to furnish bond for the prosecution of his appeal according to the time agreed upon by the governor and council; and according to the statute of 1764 both the appellant and the appellee were required to give bond in the sum of £250, lawful money, with a good surety or sureties, the appellant giving this bond to the superior court, or to its clerk, before adjournment, the appellee filing his bond in the clerk's office before he should receive a

[1] Rhode Island Colonial Records, IV, p. 199.

[2] For these cases see Rhode Island Colonial Records, IV, pp. 268, 269, 412.

[3] MS. records of superior court.

copy of the case. Let us examine court records to see whether these provisions were complied with.

Under the act of 1706 bond was furnished by the appellants in four of the cases appealed from the decisions of the general assembly: Albrow *v.* Noyes, in 1706; Chapman and Norton *v.* Rouse, in 1715; Ford *v.* Hodgson, in 1717, and Crawford *v.* Smith, in 1719. No sum is specified in the record of these cases except that of Ford *v.* Hodgson, where the appellant gave bond in the sum of £300. In this case the appellee was also required to give bond in the sum of £1,000, with security, although there was no colonial law or English regulation at that time requiring bond of the appellee. It was customary in these general assembly cases to file bond in the recorder's office within ten days after the appeal had been granted.

The records state that bond was furnished by the appellants or required of them by the court in nine of the ten appeals granted by the superior court for Providence County between 1747 and 1776. In two of these nine cases, Galton *v.* Collins, appealed in 1747, and Sessions *v.* Brayton, appealed in 1767, both the appellant and the appellee gave bond; in Sessions *v.* Brayton each party to the suit giving the bond within forty days from the rising of the court in the sum of £200, sterling money of Great Britain. In the case of Isaacs *v.* Merritt, appealed in 1756, bond was furnished for the appellant by Isaac Hart and John Cole in the sum of £100 sterling. The appellant in the case of Tyler *v.* Russell, appealed in 1758, was ordered by the court to give bond for £100 sterling, with surety. The appellants in Arnold et al. *v.* Greene, appealed in 1765, were required to give bond in the sum of £150 sterling, within thirty days after the rising of the court. It will be noticed that in certain cases appealed subsequently to the passage of the act of 1764 bond was not given in the exact sum, £250, lawful money, specified by that statute; and that bonds were not always required to be filed before the rising of the court, as provided by the act just cited.

The records both of the assembly and the superior court are not always exact in statement. We read, for example, that in certain cases the parties complied with the law, although the amount of the bond, the time of filing, and similar particulars are not recorded. While we find instances, therefore, where the law was not complied with to the letter, it is probable that Rhode Island courts observed in the main the provisions of legislative enactments.

The processes of appeal may be further illustrated by tracing the history of certain cases. The litigation[1] in regard to the church lands at South Kingstown, during which the attempt was made in four cases to appeal to England, is of so much interest and importance that it demands a place in the history of Rhode Island appeals.

In 1657 the chief sachems of the Narragansett country sold Petaquamscut Hill for £16 to John Porter, Samuel Wilbore, Thomas Mumford, and Samuel Willson, of Rhode Island, and John Hull, of Massachusetts; and in the year following the sachem of Nienticut sold some lands north of this tract to the same purchasers. Brenton and Arnold were afterwards associated with these five men and jointly they became known as "the seven purchasers."

On June 4, 1668, five of these purchasers passed an order "that a tract of 300 acres of the best land, and in a convenient place, be laid out, and forever set apart as an encouragement, the income or improvement thereof wholly for an orthodox person, that shall be obtained to preach God's word to the inhabitants." It appears probable that no deed or more formal conveyance was ever made. In 1679, however, a confirmatory order was passed; and in 1692 the tract was surveyed, platted, and the words "to the ministry" entered upon the draft. It will thus be noticed that the proprietors did not define the term "orthodox:" and it would seem that the phraseology of the gift was purposely left undefined, for at a meeting of the seven purchasers in 1692 it was thought best to assign it for the use of the Presbyterians, but Jahleel Brenton, esq., argued that it would damage their reputation in England, if they gave so much to the Presbyterians and nothing to the Episcopal Church; "and therefore," he said, "if you will be ruled by me, we will not express it to the Presbyterians, but will set it down *to the ministry* and let them dispute who has the best title to it." Upon the interpretation of this word "orthodox" hinged the whole subsequent controversy.

No one claiming these ministerial lands, Henry Gardner, in 1702, entered upon 20 acres of them and James Bundy upon

[1] Douglass's Summary; Updike's Episcopal Church in Rhode Island, pp. 68–82; Rhode Island Historical Society Collections, III, pp. 123–130; Johns Hopkins University Studies, Series IV, p. 124; College Tom, by Caroline Hazard, pp. 82–85; Catalogue of the Prince Library. I regret that the moving of the Boston Public Library made it impossible to examine the Prince MSS. themselves.

the remaining 280. In 1719 George, son of Thomas Mumford, bought these 280 acres of Bundy.

Shortly after this transfer several inhabitants of the Narragansett country petitioned the Bishop of London and the Society for the Propagation of the Gospel in Foreign Parts for a missionary. Dr. McSparran was appointed as such in 1721, and Mr. Gardner thereupon delivered to him the 20 acres of which he had held possession since 1702. In 1723 Mr. McSparran, upon a writ of ejectment, secured possession of the 280 acres held by Mumford, on the ground of the confirmation of 1679 and the survey of 1693, the original grant of 1668 being secreted. In two trials in colonial courts, however, McSparran was defeated. He appealed to the King in council, but the Society for the Propagation of the Gospel refused to lend its assistance and the matter rested, Mumford keeping possession of the property.

In 1732 a Congregational or Presbyterian church was formed in Kingstown under Rev. Joseph Torrey as the "first incumbent of ordination." Mr. Torrey at once laid claim to the whole tract of 300 acres. He brought action against Gardner in the colonial courts for the 20 acres, but was defeated. On September 2, 1735, Torrey prayed the superior court for an appeal in this case to the King in council, but the court declined to grant it. In 1732 he brought an action of ejectment against Mumford for the 280 acres, but both the inferior and superior courts decided in favor of Mumford. Upon Torrey's appeal to the King in council these verdicts were disallowed and possession of the 280 acres given in 1734 to the appellant. Upon advice from England, Torrey, in 1735, conveyed this tract to six trustees, who in turn leased it to Robert Hazard.

Dr. McSparran, the Episcopal or Church of England minister, now brought an action against Hazard, as Torrey's tenant, for the tract of 280 acres. In 1737 the original order of the proprietors in regard to the church lands, which had been secreted, came to light, and Mr. McSparran, in behalf of himself and successors in St. Paul's Church, by the advice of his lawyers brought a new writ of ejectment against Hazard, as tenant of the 280 acres. He was defeated in the colonial courts, but was finally granted an appeal to England. Upon a full trial before the King in council, that tribunal, on May 7, 1752, decided adversely to the claims of McSparran. The decision of the superior court was sustained and the lands confirmed to Dr. Torrey.

Considerations other than pecuniary undoubtedly had much weight in the progress of this controversy. The Society for the Propagation of the Gospel had established many Episcopal missionaries in the colonies, especially in those of the North; and in this activity the Congregational ministry perceived an intention on the part of the English Government not only to spread the Episcopal faith, but to establish bishops among them. It was these considerations which aroused the jealousy of the other denominations; and before the close of the litigation nearly all of the Episcopal and non-Episcopal clergy became involved in the controversy. Pamphlets were published on both sides which were not lacking in partisan ardor or in bitterness, and even other colonies outside of Rhode Island became deeply interested in the struggle. In a letter[1] written to Dr. Torrey on July 14, 1739, Dr. Benjamin Colman, of Boston, says that the general court of Massachusetts went to the length of ordering "a Collection through all the Congregations in the Province and that the Moneys that shal be collected be put into our Hands by the Subscribers for your Service, in the further Support of your Defense against the Suite which Dr. McSparran has so unjustly commenced ag^{t} you." The amount thus collected by Dr. Colman amounted to £747 8s. Other collections were received from Connecticut. The controversy finally became not only acrimonious, but destructive of any real progress in the spread of Christian beliefs.

The decision by the King in council, however, was a triumph of principle over the sectarian partialities of the members of that tribunal. According to the law of England no one was considered orthodox who was not attached to the Established Church; but the King in council held that the term "orthodox," as used in this New England document, applied legally to all who were sound in the doctrines of their own particular church, irrespective of denomination. It being determined by the colonial jury that the grantors of the church lands belonged to the Congregational or Presbyterian faith, the King in council decided that the intention of the donors, by the term "orthodox," was that the estate should be appropriated for the support of the ministry of that denomination; and they so decided, notwithstanding the fact that a clergyman of the Church of England was the adverse party to the suit.

[1] MS. in private hands.

While there is no particular importance attaching to the matters involved in Isaacs *v.* Merritt, this case will further illustrate the practice of appealing quite as well as any other. There is, nevertheless, some little interest in this appeal, for the reason that it is one of the few cases of which we find official record both in Rhode Island and in England. It is also the only one of such cases among the documents of which we find an appeal bond. The salient facts[1] in this case are here given.

John Merritt, of Providence, brought action against Jacob Isaacs, of Newport, in the superior court of common pleas for Providence County, at the December term, 1755, for large damages. At this trial Merritt complained that the defendant had broken his "promise and assumption" made to the plaintiff. He alleged that on April 14, 1743, Abraham Isaacs, of New York, by his promissory note of that date, duly signed, became indebted to him in the sum of £285, lawful money of New York, together with the lawful interest thereon till the same should be paid. Being so indebted, Abraham Isaacs died intestate, and Hannah Isaacs, widow of the said Abraham, became the administratrix of the estate. Hannah Isaacs dying before she had fully administered the estate of her husband, the administration of the residue was lawfully granted to the defendant, Jacob Isaacs. But after the death of Abraham and during the life of Hannah, he (Merritt), at the October term of the supreme court of New York in 1744, recovered judgment on the said note against Hannah for the same, with damages and costs amounting in all to £338 11d., to be paid out of such goods and chattels as were possessed by the said Abraham during his lifetime, when the same should thereafter come to hand. After Hannah's death, Merritt was about to sue the new administrator, Jacob Isaacs, on the aforesaid judgment; but he (Merritt) agreed to forbear for a season the prosecution of the suit, Isaacs paying him £100, part of the sum for which judgment was given, and solemnly promising to pay the remainder of the said sum, together with interest, in a short time. Merritt therefore suspended prosecution on the said judgment till October 1, 1754, when Isaacs had not yet paid the remainder of the said sum, though often requested to. For these reasons he asserted that Isaacs had broken his

[1] MS. records of superior court; MS. privy council register.

promise, and claimed, as laid in the writ of September 18, 1755, damages therefor to the amount of £6,000, current money of New England.

Isaacs, on the other hand, alleged that he had never promised to pay the aforesaid judgments in the manner and form described by Merritt; that according to law such judgments were to be paid by administrators out of the goods, chattels, and credits of the intestate; that at the time of the purchase of the plaintiff's writ, or since, there had not come into his (Isaacs's) hands any other assets of the said intestate's estate wherewith to satisfy the plaintiff's demands; and that this was the reason why the remaining part of the said judgments was still unpaid.

After due trial of this case, the inferior court of common pleas decided that Merritt should recover from Isaacs £236 13s. 1d., current money of New York, with costs of suit, amounting to £74 6s,, Rhode Island currency. Isaacs appealed to the superior court for Providence County, and at the March term, 1756, the decision of the inferior court was affirmed, with costs. Isaacs then moved for an appeal to the King in council, which was granted. He complied with the law regulating appeals to England, and furnished bond in the sum of £100 sterling. Isaac Hart, of Newport, and John Cole, of Providence, were the appellant's bondsmen; and the document was signed, sealed, and delivered to the court in the presence of Samuel Chase and Alexander Black.[1]

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[1] The bond is as follows:

Bond to appeal to King in Council.—Isaac Hart and John Cole to John Merritt, March Term, 1756.

Know all Men by these Presents That we Isaac Hart of Newport and John Cole of Providence in the Colony of Rhode Island Merchants are held and Bound to John Merritt of Providence aforesaid ment[d] in the Sum of one Hundred pounds Sterling Money of Great Britain to be paid to the said John Merritt or to his Executors Administrators or Assigns To the which payment well and truly to be made We bind ourselves our Heirs Executors Administrators and Assigns and last of Us by himself for the whole and in the whole and our and last of our Heirs Executors and Administrators firmly by these presents Sealed with our Seals Dated the Twenty Second day of March in the 29th Year of His Majestyes Reign A D 1756

Whereas the above Mentioned John Merritt has now obtained a Judgment of our Superior Court of Judicature against Jacob Isaacs of Newport in the County of Newport & Colony aforesaid Merchant As by the Record

The case was finally brought before the King in council for adjudication. On February 17, 1758, or nearly two years after the granting of the appeal by the superior court, the privy council reversed the decision of that tribunal, and thus rendered a judgment in favor of the appellant.

We have now reviewed as fully as possible within the limits of this paper the processes of appeal in the various colonial courts. Occasional references have necessarily been made to the King and privy council, but the account as thus far given must be supplemented by at least a few words in regard to the privy council as an English institution and by a brief historical consideration of the procedure of the King in council as the supreme court of the colonies.

Although appeals were first adjudicated by the King and his privy council in the latter part of the sixteenth century, the council itself had an existence at least four centuries prior to that period. In the early days it was called the *Concilium Regis Privatum*, the *Concilium Continuum*, and the *Concilium Secretum Regis*. At a later period it was known simply as the council board and the privy council. The King sat with these privy councilors at his own pleasure, and their chief duty was to advise the Crown to the best of their "cunning and discretion." The number of privy councilors was also regulated according to the King's will. In ancient times, and even as late as the reign of Edward III, there were seldom more than fifteen.[1] Among them were the treasurer, the chan-

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of said Court appears and Jacob Isaacs being agrieved therewith Appeals to His Majesty in Council in Great Britain from the Said Judgment of the aforesaid Court of Judicature now sitting in providence aforesaid.

The Condition of the above written obligation is Such that if the above mentioned Jacob Isaacks Shall & Do within Twelve Months and a Day from the date hereof well & truely prosecute his Said Appeal with effect or in Default thereof well and truely pay & Satisfy the Said John Merritt His Heirs Executors Administrators & Assigns all such Costs and Dam ages as they or any of them Shall have & Sustain in Defending against the aforesaid Appeal then this present obligation to be void & of no Effect or Else to be and Remain in full force and virtue

I. HART [SEAL]
JOHN COLE [SEAL]

Signed Sealed & Delivered in the presence of—
SAM CHACE
ALEX[R] BLACK

[1] Crabb's History of English Law, p. 217.

cellor, and such other persons learned in the law and judicial matters as the King saw fit to appoint. After Edward's time, however, the number so increased that it was found impossible to transact the King's affairs with secrecy and dispatch, and Charles II, in 1679, limited it to thirty. Of these, fifteen were to be the principal officers of state and were to be councilors by virtue of their official position; the remaining fifteen were made up of ten lords and five commoners. After Charles's time the number of councilors was again much increased, and finally became indefinite. The president of the council was the third great officer of state. The duty of president was something more than that of a privy councilor, for he reported to the King whatever occurred at the council table in his absence.

On February 20, 1627, the privy council, sitting at Whitehall, passed certain orders[1] to be observed in meetings of the council as a tribunal of justice. As far as we can ascertain these orders formed the first official provision in regard to the method of transacting the judicial affairs of the council. Although the records do not so specify, there can be no doubt that colonial appeals were adjudicated according to these regulations. The orders are as follows:

I. In the term times, the councillors, of ordinary course, are to sit on Wednesdays.

II. When any causes are handled, and partys heard speak on both sides, the Lords are, by questions or otherwise, to inform themselves of the truth of the matter of fact, but not to discover any opinions till all be fully heard.

III. When any cause is fully heard, the partys are then to retire, and the Lords to debate alone, and if any variety of opinions continue, which cannot be reconciled, then the Lords are to vote it severally, if it be demanded; and the Lord President, or one of the principal secretarys, if the Lord President be absent, is to take the votes.

IV. In voting of any cause, the lowest councillor is to begin and speak first, and so it is to be carried by most voices; because every councillor hath equal vote there: and when the business is carried by the most voices, no publication is afterwards to be made, by any man, how the particular voices and opinions went.

V. Upon the petitions of suitors, the clerk of the council who then waits, shall set a note, when the petitions were exhibited, that the Lords may thereby see how the suitors stand in seniority, and, according to that and other necessity of occasion, they may be despached, wherein respect

[1] For these orders and other official provisions in regard to privy council procedure, noted in the following pages, see Macqueen's Appellate Jurisdiction of the House of Lords and Privy Council.

is to be had to the poorest petitioners, that they be not wearied out with over long attendance.

VI. At every council, before the Lords rise from the board, the Lord President, or one of the principal secretarys, in his absence, is to signify to the Lords what business of the day do remain, and to take their resolution with which to begin the next sitting, if greater occasions intervene not.

VII. When any order is agreed upon, the clerk of the council attending, shall take notice thereof in writing, and punctually read, openly, how he hath conceived the sense of the board, that if anything be mistaken, it may then be reformed; and afterwards when the clerk shall have drawn the said order at large, in any cause of importance, before he enter the same into the council books, or deliver it to any person, whom it may concern, he is to show the draught to the President, or, in his absence, to one of the secretarys of state, to be allowed and signed under one of their hands, before the entry and delivery thereof.

On July 22, 1664, it was "ordered that the clerks of the council do take care for the future, that all petitioners who shall exhibit any petition to the board, do first sign the same." While this order refers to "petitions," regular judicial appeals were included within its provisions. It has already been observed that the council and other courts of the time did not always make a careful distinction between a petition and an appeal, and that an appeal was often presented to the consideration of the council by means of petition.

In 1667 the council passed two orders in regard to its procedure in judicial affairs. On January 31 of that year standing committees of council were established and provisions made for their regulation. Additions to this order soon became necessary, and on February 12 a second decree was passed. This order recites that—

His Majesty, having among other the important parts of his affairs, taken into his princely consideration the way and method of managing matters at his Council-board and reflecting that his Councils would have more reputation if they were put into a more settled and established course, hath thought fit to appoint certain standing committees of the Council for several businesses: together with regular days and places for their assembling, in such sort as followeth:—A committee for the business of trade, under whose consideration is to come whatsoever concerns his Majesty's foreign plantations, as also what relates to his kingdoms of Scotland or Ireland, in such matters only relating to either of those kingdoms as properly belong to the cognizance of the Council-board, the isles of Jersey and Guernsey which is to consist of the Lords Privy Seal, Duke of Bucks, Duke of Ormond, Earl of Ossory, Earl of Bridgwater, Earl of Anglesey, Earl of Lauderdaill, Lord Arlington, Lord Holles, Lord Ashley, Mr. Comptroller, Mr. Vice Chamberlain, Mr. Secretary Morice, Sir William Coventry; the usual day of meeting to be every Thursday in the Council-

chamber, and oftener, as he that presides shall direct; and hereof three or more of them to be a quorum. And it is further ordered that this committee calling unto them his Majesty's Attorney-General or else his Majesty's Advocate do henceforward hear all causes that by way of appeal come from the isles of Jersey and Guernsey. The orders whereupon being in due form prepared by the Clerk of the Council are, before they are signed, to be read at the Council-board, and there approved of, so that they may receive the approbation and authority of the whole Council, which before used to pass distinctly from the Committee only by a derivative power from the Board.

The system as thus outlined continued until January 27, 1687, when it was ordered that not only a certain number, but all of the lords of the privy council be appointed a standing committee on trade and foreign plantations. But it appears that this return to the early method of adjudicating appeals did not result successfully. A further change, therefore, became necessary, and on December 10, 1696, an order was passed which recites that—

His Majesty having this day taken into his Royall consideration the matter of hearing appeals from the Plantations, is pleased to direct and order in councill that all appeales from any of the Plantations be heard as formerly by a committee, who are to report the matters so heard by them, with their opinion thereupon, to his Majestie in councill. And in order thereunto his Majestie did declare his further pleasure, that all the Lords of the councill, or any three or more of them, be appointed a committee for that purpose.

It will be noticed that under the provisions of this order all of the lords of the council might still act as a committee on hearing appeals from the colonial courts. But whatever the number of privy councillors serving on this committee, whether the whole council or only three members, it had only a committee's powers and was required to make its report to the council itself.

A brief reference must now be made to the manner of presenting colonial appeal cases before this committee.[1]

According to an order of October 31, 1689, it was declared that thereafter "there be not admitted above two council to be heard on a side in any cause at this board, and but one allowed on each side for reading such evidences and proofs[2] as there shall be occasion to make use of."

[1] A committee with similar functions is now (1895) known as the Judicial Committee of the Privy Council.

[2] Copies of records and other proceedings were brought from the colonies when appeal cases were adjudicated by the King in council.

It appears that prior to 1727 the meetings of the committee were frequently put off because of the failure of counsel to be present and argue their cases. Delays were thereby caused which resulted in the obstruction of justice and the detriment of the suitors. To stop this practice the lords of the committee, on January 18, 1727, ordered that—

> When a day shall be appointed to hear any appeals or complaints either from the plantations or from the Isles of Jersey and Guernsey, or for any other cause or causes depending before this committee, such pretence of want of counsel shall not be allowed of us as a reason to defer the hearing thereof. Whereof all persons concerned in soliciting causes before this committee are to take notice and govern themselves accordingly.

On March 10, 1730, the King in council passed an order which recites that—

> Whereas a practice hath of late been introduced by parties who have causes depending before the council, to print and deliver a state of their case to every privy councillor at the time of hearing of the said causes, which printed cases have not been signed by any counsel learned at law. And whereas the same hath been represented to his Majesty at this board as a very irregular and improper way of proceeding: His Majesty this day took the same into his royal consideration, and being desirous to prevent the like practices for the future, is hereby pleased, with the advice of his Privy Council, to order that no person whatsoever do presume to deliver any printed case or cases to any Lords of the council, or any committee thereof, unless such case or cases shall be signed by one or more of the counsel, who shall attend at the hearing of the cause.

Furthermore, when causes were argued upon printed points, or heads of argument, which were handed up to the members of the committee as judges, the rule was to pass a copy to the counsel of the adverse party. It was usually customary for the counsel to note on the margin of this copy his own strictures upon the argument of his opponent, and to use the copy, with these marginal notes, as a minute by which to reply to the line of argument therein contained. Sir John Strange and Sir Dudley Rider used these printed points in arguing the case of Phillips *v.* Savage in 1738.[1]

On April 21, 1746, it was ordered by the lords of the committee of council for plantation affairs that "when appeals or other causes are put upon the list of business for hearing before this committee, that the party or parties at whose request such appeal or cause is set down, shall be in readiness to be heard whenever their Lordships shall appoint a day." An additional order was passed by the lords of the committee

[1] Massachusetts Historical Society Proceedings, 1860–1862, p. 167.

on July 9, 1751. It stipulates that when "the said appeals or causes shall have been so put upon the list of business for hearing, the same be heard in the course they are so set down, without any further notice, order, or direction of the committee for that purpose."

It is plain that the method of procedure was a careful one. Every appeal[1] was referred to the privy council's committee on plantation affairs, and before the lords of this committee the case was carefully and fully tried. But the lords of the committee did not always rely upon their own judgment alone. They frequently referred cases to the lords commissioners for trade and plantations; and these commissioners, in turn, often sought the advice of the attorney and solicitor general.[2] Reports were then returned from board to board until the committee on plantation affairs made its report to the King and the entire council. The council's advice upon the report was then obtained, and the King, acting upon this advice, issued the final decree in the form of an order in council, either affirming, reversing,[3] or otherwise revising the decision of the colonial court. In conclusion it need only be said that during the period with which we have been concerned in the present inquiry, the King in council was a tribunal well adapted for the adjudication of colonial appeal cases. Not only its personnel, but its very procedure insured justice to both appellant and appellee. Certainly no other English institution of the time could have exercised more adequately or satisfactorily than did this "honorable and reverend assembly of the King and his privy council" the functions of a tribunal with appellate jurisdiction over the courts of Rhode Island and the other American colonies. It was a noble predecessor of a still nobler tribunal, the Supreme Court of the United States.

[1] Either in chancery or in common law.

[2] Douglass's Summary, I.

[3] After the report of the committee, affirming or reversing the judgment appealed from, had been confirmed by the King in council, a rehearing was not granted. In Penn *v.* Lord Baltimore, on a petition by the plaintiffs for a rehearing, the committee reported that there was no instance of rehearing on an appeal, which would be mischievous, unless on some very particular circumstances, such as the discovery of new evidence or fraud; and the petition was therefore rejected. (See Burge's Colonial Law, I, Introd., p. lxxvii.)

XIX.—RHODE ISLAND AND THE IMPOST OF 1781.

By FRANK GREENE BATES, of Cornell University.

At the close of the year 1780 affairs in America were in so critical a condition that it seemed as if the extremity was at hand. There was still but the germ of a constitutional union. Congress was helpless. Demands on the States for money had almost ceased to be of avail. Credit was at low ebb. The Army was suffering from the lack of pay, provisions, and clothing. Mutiny pervaded the air. Heroic measures were necessary. "If we mean to continue our struggle," said Washington, "we must do it upon an entire new plan. Ample powers must be lodged in Congress, as the head of the Federal Union, adequate to all the purposes of war."[1] Again, "There can be no radical cure till Congress is vested by the States with full and ample powers to enact laws for general purposes."[2] Only then would ruinous delays cease. As a step toward greater efficiency Congress, on February 3, 1781, recommended that they be vested with power to lay a duty of 5 per cent on all goods, with a few exceptions, imported from foreign lands, and a like duty on all prizes condemned in the admiralty courts."[3] New Hampshire soon granted the request, and before the summer of 1782 she was followed by all the States except Rhode Island and Georgia.

Here is the point at which Rhode Island departed from that hearty acquiescence which she had given to every act tending to united resistance to oppression or to the prosecution of the war. From the date of her first official protest against the navigation laws in June, 1764, in the stamp-act congress, in nonimportation agreements, in committees of correspondence,

[1] Ford's Washington, IX, 13.
[2] Ib., IX, 125.
[3] Journal of Congress, III, 572.

and in the adoption of the Articles of Confederation, that State was found following closely the example of Massachusetts and Virginia. In the official demand for a Continental Congress, and in renouncing allegiance to Britain, she was the very first of the thirteen colonies to act. Now, in 1781, she hesitated. For the cause must be sought some new element entering into the case. Heretofore Congress had had the direction of the war, of foreign relations, and of the common interests of the States. Now the General Government proposed to enter the State with authority and there collect for its own use a tax. The Articles of Confederation expressly declared the States sovereign and independent. With that understanding Rhode Island had ratified them. In the proposed measure there was an intrusion on the Rhode Island idea of State sovereignty; an idea expressed in the instructions to her delegates, given in May, 1776, "to secure to this colony, in the strongest and most perfect manner, its present established form and all the powers of government, so far as relate to its internal police and conduct of our own affairs, civil and religious."[1]

This is the mainspring of the State's action in 1781 and in the succeeding years to 1790. The full import of the idea is exhibited in the discussion which followed through weary months. For eight months Rhode Island remained silent on the vital question. But if the men who remained at home saw the world about them only through the exaggerated perspective of provincialism, the Delegates in Congress saw aright. Varnum and Mowry wrote home from Congress in August, 1781: "We are at a loss to conjecture the rumors which have induced the State of Rhode Island to delay complying with the requisition of Congress."[2] In October Governor Greene announced that the State was unable to determine the advisability of the measure, and would await the action of the other States.[3]

Thus the matter rested until General Varnum returned home near the close of the year to exert his influence in behalf of the impost. In a series of articles published in the Providence Gazette he demonstrated the desirability of a stable revenue, and developed his theory of a strong nationality.[4]

[1] Rhode Island Colonial Records, VII, 526.

[2] Letters 1781–82, No. 3.

[3] Rhode Island Colonial Records, IX, 485.

[4] Providence Gazette, March 9–16, 1782.

"Were we to contemplate the United States separately," he writes, "as composing thirteen distinct sovereignties, unconnected with and independent of each other, the requisition in question would appear totally absurd and ridiculous. This, however, is not the case."[1] The utterance of such rank heresy called forth in opposition a champion in the person of David Howell. In a series of letters Howell advanced the arguments of his party, which may fairly be taken as the sentiment of the masses in the State.[2] He compared the impost to the stamp act, and gainsaid that Congress ever claimed power over the purse of the people. He relied on the Articles of Confederation for proof of the State's sovereignty, and absolutely denied that there was any inherent sovereignty in Congress. The plan proposed would work harm to the commercial States. "Indeed," said he, "it is against the welfare of any commercial State to clog and embarrass trade with any restrictions or duties whatever."[3] But if duties were necessary let Rhode Island lay her own. On the assumption that import duties are borne by the importer, it was argued that when taxes were levied under the Articles of Confederation, Rhode Island paid one-fiftieth of the whole amount, but under the proposed system, granting that she possessed one twenty-fifth of the total shipping, she would pay one twenty-fifth of the tax. Should customs officers be introduced from without there would be no means of controlling them. The funds collected would be turned into the general Treasury, where the taxpayer could not observe their disbursement. If there was any benefit to be derived from the power to lay duties, the State should retain it, for the inland States in their turn would not surrender their peculiar privileges. The grant was considered further to be too indefinite. The time was not specified and the grant was irrevocable. In short, Rhode Island admitted her duty to pay her quota of taxes, but only according to the Articles of Confederation. She considered it the most precious jewel of sovereignty that no State be called on to open its purse but by authority of the State and by her own officers.

Here the controversy rested. The Fabian policy of the opposition had kept the measure out of the assembly. The first result was the retirement of Varnum and Mowry and the elec-

[1] Providence Gazette, March 9–16, 1782.
[2] Ib., March 23–April 13, 1782.
[3] Ib., March 30, 1782.

tion of Delegates less favorable to the impost. These were John Collins, the future paper-money governor, General Cornell, Jonathan Arnold, and, most notable of all, David Howell. The latter was instructed to proceed to Congress, where he soon had occasion once more to defend the position of his party, this time before a Congressional committee. At the request of a committee appointed to inquire why Georgia and Rhode Island had not granted the impost, Howell appeared before them to defend his State. As in his newspaper writings he had spoken to his neighbors, so now he spoke to the whole country. His objections as now expressed were four:

(1) The proposed system tended to raise a revenue for the use of the General Government and not of the State. This would be paid by the merchants, and should they be unable to obtain a correspondingly higher price for their goods, they would be crushed out of existence. Such a burden would rest more heavily on Rhode Island than any other State, from the preponderance of the mercantile and manufacturing classes and her inability to produce agricultural products sufficient for her own markets.

(2) Rhode Island had suffered heavily from the ravages of war. Newport, which in 1774 sent out 150 sail, now sent out but 3. To compensate for her losses the State should retain the power of levying duties. More especially should this be done in self-defense, so long as the large States persisted in claiming western lands.

(3) It would be derogatory to the sovereignty of a State to permit foreign officers within her boundaries collecting a revenue for some outside authority. All revenue in the State, said he, should be collected by her own officers and stand to her own credit.

(4) The terms of the grant were too indefinite. Though the intentions of the present Congress were honorable, their successors, by keeping the national debt outstanding, might perpetuate the impost. The States would be powerless to prevent it.

In closing, Howell suggested two amendments. These were: (1) That each State retain the appointment of the collectors. (2) That the revenue collected in each State be credited to the account of that State. By such changes the presence of outside officers would be dispensed with, and Rhode Island would be the gainer from the position which she expected

again to assume in the commercial world.[1] To neutralize such arguments Morris sent an urgent appeal to Governor Greene, but in vain.[2]

Tiring of delay, Congress, on October 10, 1782, demanded an immediate and definite answer to the proposition.[3] With the question now forced upon the Assembly Howell, writing to Theodore Foster, said:

> The crisis has arrived. * * * It is an important step. * * * I hope those who have undertaken to contend for the liberties of their country and retain the zeal of 1775 will [display] it on this important occasion. * * * I hope every exertion will be made on the occasion by the friends of liberty and free trade. * * * Should it be adopted, I shall no longer consider myself the representative of a sovereign and free State, but wish to be recalled. * * * This is but an entering wedge; others will follow—a land tax, a poll tax, and an excise.[4]

In a last appeal to the assembly the Delegates rehearse to that body the old arguments, and in their extremity declare that to grant this perpetual power was to abridge the rights of future assemblies.[5]

The legislature met on the last Monday in October, and on November 1 reached a vote on the impost. Of the whole number (68), 53 were present. The vote was unanimously against the measure. Speaker Bradford communicated this result to Congress in a letter, giving three reasons for rejection.[6] These were: (1) It would be unequal in operation, bearing most heavily on the commercial States. (2) It proposed to introduce into the State officers unknown and unaccountable to the State government, and hence unconstitutional. (3) As the grant was indefinite in time, it would tend to make Congress independent, and would be dangerous to the liberties of the States. At the same time he hastened to assure Congress of the State's willingness to bear its share of the burdens of the Government. Anticipating the storm that would arise in Congress, instructions were sent to the Delegates—

> To vindicate and support with a becoming firmness on all occasions such of the acts of the general assembly of this State as respect the United States at large, and to use their utmost exertions to prevent any infringement being made on the sovereignty and independence thereof.[7]

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[1] Letters, 1781–82, July 30, 1782.

[2] Letters, 1782–83, No. 1, August 2, 1782.

[3] Journal of Congress, IV, 86.

[4] Foster Corr., I, 20.

[5] Letters, 1782–83, Nos. 22 and 23, October 13–15, 1782.

[6] Ib. No. 38.

[7] Acts and Resolves, MS., November 2, 1782.

The response of Rhode Island was a new departure. No other State, however much it had hampered its grant, had refused outright. Even before the news of its fate arrived, the conviction that the impost would be rejected was so strong that a committee was appointed to visit Rhode Island and urge the necessity of the measure.[1] Notwithstanding the arrival of Bradford's letter, the committee set out on December 22, but was recalled on the same day by intelligence that Virginia had repealed her grant.[2]

Early in the month it had been seen that the only hope of winning over Rhode Island lay in crushing Howell's influence there. A pretext for an attack on him was found in certain writings on the foreign loans which appeared in the newspapers. These were pronounced derogatory to the character of the United States and the honor of Congress, as well as detrimental to the financial interests of the nation.[3] The Secretary of Foreign Affairs was directed to write to the governor of Rhode Island to learn the author, but Howell having acknowledged the authorship, it was moved that the Secretary be discharged from these instructions, "Mr. Howell, a Delegate from the State of Rhode Island, having acknowledged himself the author of the extract of the letter quoted in the report of the committee."[4] Howell at once moved to postpone this motion, which placed his name on the journal in such a connection, to consider a similar motion, accompanied by a formal acknowledgment of the writings with his justification. He denied the authority of Congress over his correspondence with his State officials, and maintained the truth of his statements. The original motion prevailed, followed by another, that whereas Congress had admitted on their Journal an entry of a motion by Mr. Howell highly derogatory to the honor and dignity of Congress, a committee be appointed to determine what measures should be taken thereon.[5] Accordingly the Secretary of Foreign Affairs was directed to transmit Howell's motion, together with a statement of the foreign loans, to the executive of Rhode Island, with a view to prove the falsity of the writings.[6] But when, two weeks later, Arnold moved to forward

[1] Journal of Congress, IV, 115; Madison Papers, I, 225.
[2] Madison Papers, I, 238, 495; Journal of Congress, IV, 126.
[3] Journal of Congress, IV, 114.
[4] Ib., IV, 120; Madison Papers, I, 223.
[5] Journal of Congress, IV, 122.
[6] Ib., IV, 122-123.

to the State executive certain letters substantiating Howell's statements the motion was postponed. That the circumstance might not be used by Howell in justification of his action, the proceedings were placed on the secret journals.[1] This occasioned no little vexation in Congress. It was irregular, and adopted only in the last extremity. That this attack on Howell was made to break down his influence at home is abundantly proved.[2] Madison says the "unanimous suspicions were fixed on Mr. Howell." It was thought that the exposure of the author of the writings "would destroy in his State that influence which he exerted in misleading its counsels in regard to the impost."[3]

The Rhode Island champion was the ultra state rights member of the Continental Congress. Holding extreme opinions, and forced often to maintain them against great odds, he sometimes overstepped the bounds of parliamentary courtesy and practiced an obstruction policy no less vigorous than has been pursued in our national Capitol in more recent years. Of his sincerity and singleness of purpose there is ample proof in his own writings and those of his colleague, Dr. Arnold. The latter says:

> It appears to have been his first and only wish to serve his country generally, and especially his constituents, with unshaken fidelity. * * * He clearly understood the Articles of Confederation, and distinguished between the rights relinquished by the separate States and those retained.[4]

When the contest was at an end, the Assembly, at its session in February, 1783, adopted resolutions approving the conduct of their Delegates. The resolutions expressed their appreciation of "the meritorious services rendered to this State and to the cause of freedom in general by the firmness and patriotic conduct of the said Delegates, particularly in their strenuous exertions to defeat the operation of measures which this State considered as dangerous to the public liberty."[5] The attack on the Rhode Island Delegate had failed. The impost was lost.

In reviewing Rhode Island's action on the impost the motives may be reduced to three: (1) A misunderstanding of the effects of an impost duty. (2) Anxiety respecting the disposal of the western lands. (3) An extraordinary jealousy of

[1] Secret Journal of Congress, I, 248–249.
[2] Letters, 1782–83, No. 47, January 8, 1783.
[3] Madison Papers, I, 223.
[4] Letters, 1782–83, No. 34, December 6, 1782.
[5] Acts and Resolves, MS., February, 1783.

yielding to outside authority any power over her internal affairs. In relation to an impost Rhode Island stood in a peculiar position. She was the only small State in which commerce and manufactures predominated. No State was so dependent on her neighbors for agricultural produce. To build up the former commerce of the State was the dream of the new race of merchants. Free trade was to be the foster mother of their enterprise. But should a duty be levied it must be paid by the importer. He might or might not be able to add this to the price of his goods. In case it was added, the neighboring States would probably raise correspondingly the price of produce. The proceeds from the duty, instead of remaining in the State to balance this enhanced price, would be withdrawn for the use of the National Government. Should the neighboring States be provoked to lay an embargo against her, the State would be in a sorry plight.

The attitude of Rhode Island toward the public domain was similar to that of New Jersey, in that she did not contend for national jurisdiction over the territory.[1] She simply demanded that the proceeds from the sale of such lands should accrue to the benefit of the general Treasury. From the first discussions of the subject did her Delegates strive, as by their instructions they were directed "to contend earnestly for this State's proportion of vacant or back lands."[2] Filled with this solution of the nation's finances Rhode Island refused to yield her peculiar advantages until she was assured of a fair share of the proceeds of this great domain.

The founders of the State represented the extreme of individualism and the trait strongly marked their descendants. Civil and religious liberty was granted by the charter of 1663 to a degree heretofore unknown and handed down the generations as a precious heirloom. The colony's first century had been a struggle against oppression. From Plymouth, from Massachusetts, from Connecticut, even from all combined, had come persecutors of her citizens and claimants to her territory. As a sovereign State she hastened to resist British oppression. But the century of controversy with her neighbors could not fail to leave its scar, even after the wound had healed, and now when the first step was taken toward transferring to the

[1] Journal of Congress, II, 605.

[2] Acts and Resolves, MS., November 2, 1782.

General Government any power over the local affairs of the State, she halted and refused to advance. In defeating the impost of 1781 Rhode Island was victorious. But by her act she began that course of opposition which, misunderstood by our historians, is to this day flung at her as a reproach—a course which ended only after a vital struggle in 1790.

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XX.—THE CONSTITUTIONAL CONTROVERSY IN RHODE ISLAND IN 1841.[1]

By Arthur May Mowry.

The general peace and the customary quiet of the State of Rhode Island were rudely disturbed in the spring and summer of 1842. The whole population was in a panic, and in the northern county, especially, the consternation was widespread. The struggle was confined within a restricted area and to a limited population, and the violence of the contest was very great. Son rose against father, brother attacked brother, neighbor was opposed to neighbor, and the resulting wounds are scarcely yet healed.

The Rhode Island civil war was begun during the first week of May, 1842. Then two rival legislatures were organized,

[1] The sources for the history of the Rhode Island contest are nearly all conscious material, but fortunately both sides of the controversy are well represented. The majority and the minority reports of the select committee of the House of Representatives appointed to consider the question of the interference of the President, commonly called Burke's report and Causin's report, contain an almost unlimited amount of valuable material. Turner and Burgess's report of the trial of Dorr, prepared by his supporters, is well offset by Pitman's report, which presents the opposite side. The arguments of Messrs. Hallett, Whipple, and Webster in the Luther-Borden case present the constitutional questions. King's Life of Dorr, Frieze's History of the Suffrage Movement, Potter's Considerations on the Rhode Island Question, and Bowen's Recent Contest in Rhode Island furnish very complete presentations of the subject. Reports of speeches in Congress and the Rhode Island newspapers have been found valuable to supplement the other sources. During the controversy the newspapers teemed with argumentative discussions, and a large number of these were later issued in pamphlet form. Open letters were written to Governor Morton, of Massachusetts, to George Bancroft, and to others who encouraged Dorr and his supporters. This mass of tracts is nearly unlimited, and most of the older private libraries in New England, as well as the public libraries, contain many of these publications. The perusal of these pamphlets is extremely monotonous, but in no other way can the true inwardness of the contest be obtained.

two governors-elect inaugurated, and dual governments established. The State militia was divided in its allegiance—a part upheld Governor Dorr and the constitution, while the majority took their orders from Governor King and the charter government. In each of the five counties of the State were rival sheriffs, one-half of whom had broken the laws of the State in accepting the office to which they had been elected. The President of the United States had been called upon by each governor to furnish assistance under the clause of the Constitution which guaranteed a republican form of government to every State.

The general features of the Dorr Rebellion are comparatively well known, though many inexact statements occur in the accounts that have been published, even by most accurate historians. The causes of the struggle, the incidents which led up to the civil war, are not so well known, while the few brief accounts of the preliminary steps furnish many incorrect statements, almost without exception conveying erroneous impressions.

The meagerness of the secondary literature upon the earlier movements and the erroneous generalizations that are quite universal have led the writer to an extended study from the sources of the history of the suffrage movement in Rhode Island. This work has been done in the American History Seminary of Harvard University, and this paper aims to set forth a necessarily brief account of the circumstances which led up to the war.

Many faults were found with the charter and the government which had grown up under it during the century and three-quarters of its existence, but at first demands were made for only two important changes—an extension of the suffrage and an equalization of the representation of the different towns in the lower house of the General Assembly. Fitful attempts had been made to obtain an improvement in one or the other of these matters at several different times, but never was the movement in the hands of real leaders, and never did it awaken more than a passing interest among the people.

The suffrage qualifications were not determined by the charter, but the right to establish them was placed in the hands of the General Assembly. The suffrage, as finally determined by the Assembly in 1798, was granted to those who possessed a freehold, either of the value of one hundred and thirty-four

dollars or which rented for seven dollars per annum. A relic of primogeniture existed in the possession of the suffrage by the eldest sons of the freeholders. Most of the male inhabitants of the colony owned land before the Revolution, and this restriction of the suffrage was not then a serious limitation. As the State became more and more a manufacturing community, the number of the nonfreeholders materially increased, until, by 1840, those of legal age who did not have the suffrage were more numerous than the freemen.

The second evil was, unlike the first, inherent in the charter itself, which apportioned the representation in the General Assembly, without allowing for changes in the population. In the seventeenth century no objection could be made to the six members from Newport, the four each from Providence, Portsmouth, and Warwick, and the two each from the other towns. In 1840, however, the inequalities had become very great; for example, Smithfield had a population larger than Newport, which was permitted to choose three times as many representatives; Providence was nearly twenty times as large as Portsmouth, and yet could elect but the same number of representatives. The apportionment resembled that of the unreformed English borough representation, and possibly the great reform of 1832 may have had its influence upon the demand for a change in Rhode Island.

The first steps were taken during the last weeks of the year 1840, and were not party movements at all. The Whig victories in November may have led the Democratic leaders to adopt the agitation for freer suffrage, after it was well inaugurated, as a means of regaining the popularity which they had lost, but they were surely not prominent in the early movements. The Whig features of the log-cabin campaign—processions, mass conventions, and frequent assemblages—were faithfully copied by the suffragists, and doubtless were effective instruments in awakening the people and in moving the authorities. However, the Rhode Island State Suffrage Association and the various town suffrage societies were at first by no means party movements.

The first sign of the agitation appears to have been an address, perhaps originated in Rhode Island, but ostensibly issued by a social reform society of New York. It was addressed to the nonfreeholders of Rhode Island, and urged them to hold a State convention, frame a constitution, submit it to all the

people, and if more votes were given for it than were cast at the last election of national Representatives, proclaim it as the "fundamental law of the land." Then they were advised to elect Representatives to Congress and thus provide a jury which might decide that such constitution had been legally adopted. This advice was in many respects very closely followed by the suffrage associations. Such societies were formed throughout the State before the beginning of 1841, and a weekly paper, entitled the New Age, was established as the official suffrage organ.

In January, 1841, a petition was presented to the General Assembly, signed by nearly six hundred persons, asking for the formation of a constitution, and for an extension of the suffrage, but the petitioners declined to recommend any special plan. At the same session, Smithfield asked for an increase in the number of Representatives allotted to that town. The first petition was laid on the table, while the second was discussed and a practical answer to both was given by an act calling a State convention for November to frame a new constitution. The vote for the convention was more than 2 to 1, and the Whig majority in its favor was greater than the Democratic. Perhaps some of the members of the Assembly voted for this convention hoping that the movement would result in failure, as had been the case so often before.

The voters of Rhode Island showed very little interest in this proposed convention, and the suffrage associations at once declared the whole scheme an evasion. The leaders proceeded to take steps to arouse enthusiasm among the nonfreeholders by meetings for debate, by public addresses, by mass conventions, and by enormous parades, as well as by a constant fusillade of argumentative letters and editorials, especially in the New Age and the Republican Herald.

The first of the series of parades and conventions occurred in Providence on the 17th of April, at which perhaps three thousand persons appeared in line and wore the suffrage badge. This number was probably about equal to one-third of the number of legal voters in the State. By this time some of the leading Democrats had joined the ranks of the suffragists, and had begun to assume control of the movement. The 17th of April was called the "People's Day," and it was prophesied that in the future it would rival the Fourth of July.

A second parade was planned for Election or Inauguration Day at Newport on May 5. This convention was naturally

much smaller, being held in a less populous community, but the interest and enthusiasm seem to have continued unabated. At this meeting one of the resolutions passed plainly suggested holding a State convention, of the nonfreeholders as well as the legal voters, in order to supersede the charter government. Another resolution criticised the legislature for not apportioning the delegates to the convention according to the population, and for not granting every American citizen the right of voting for delegates.

As a result of the agitation, two propositions were brought before the General Assembly at its May and June sessions. One motion, to the effect that all taxpaying resident citizens be allowed to vote for choice of delegates, was defeated by a vote of ten to fifty-one. The Democrats were equally divided, while but four Whig votes were cast in its favor. The other motion, apportioning the delegates in accordance with the population, was carried by a vote of forty-eight to twenty.

The grant of one of their demands and the refusal of the other, the more important one, was not satisfactory to the suffragists. At a third popular convention, held on Independence Day, in Providence, resolutions were passed criticising the action of the legislature, and affirming the right and advisability of holding a popular constitutional convention. July 20, a State committee, which had been appointed at the Newport meeting, issued an address requesting all the citizens of the State to choose delegates to a convention for the purpose of forming a State constitution.

The issue was fairly taken. Two conventions had been summoned to meet in the autumn months. One was called by an irresponsible committee of eighteen citizens; the other by the legislative body of the State. The delegates to one were to be chosen by all the male citizens resident in the State for a year and over twenty-one years of age; only legal freemen were to be electors of delegates to the other. The elections to the second were to be guarded in the usual manner; for the first, each election meeting could regulate its own action.

The ground upon which the Suffrage Association claimed the right to hold an "extra-legal" convention to form a State constitution was very simple, and can be briefly shown by the following quotations:

"A majority of the citizens of any State have the incontrovertible right, at any time, to assemble and alter, amend, annul or reform their government at pleasure." "We ask for

no authority from the legislature to empower the sovereign people to assemble in convention or to vote for or against the doings of that convention." "A constitution does not require to be framed and voted for under any sanction of the existing government." "The sovereign people are acting in their original sovereign capacity."

Many of the freemen were ready to grant an extension of the suffrage who were not willing to accept these constitutional theories. They considered the "original sovereign capacity" doctrine likely to lead toward an unstable government and perhaps to anarchy. "Majorities," said they, "real or pretended, will find all things lawful and all things expedient, and should they be fettered by constitutions they have only to resolve themselves into 'their original sovereign capacity,' and they may act their pleasure until another faction, stronger than they, shall arise to make them feel in their turn the miseries of such licentiousness and anarchy." "The vast majority of the people firmly believe that the will of the people must be expressed, not by mass meetings and party resolutions, but according to the forms prescribed by the constitution."

The so-called "people's convention" met in October, and after preparing a constitution adjourned for a month. The so-called "landholders' convention" met in November, drafted a scheme for a constitution, and adjourned until February, in order to allow a further discussion on the suffrage question. At its second session the people's convention perfected its constitution and submitted it to the people for ratification. Three days were allowed for voting on its adoption and, during the next three days, those who "from sickness or other cause were unable to attend and vote" were permitted to send in their proxies. It should be remembered that in Rhode Island, at all elections, the voter signed his name to the ballot which he cast. For the proxies it was only necessary to place also upon the back of the ballot the signature of the person who carried the prox. Each voter, at this people's election, was required to affirm on his ballot that he was an American citizen of the age of twenty-one years, and that he had a permanent residence in the State. He must also designate if he was a legal voter or not, under the existing laws of the State.

The vote appears to have been fairly free from fraud or error, at least for one cast under such unusual circumstances. A list

of all the voters has been preserved and has been open to investigation for fifty years. The opposition to the constitution claimed fraud, but no definite proof of illegal (?) voting has been found sufficient to vitiate the result. In January, 1842, the people's convention again met and declared that the constitution had been legally adopted, inasmuch as nearly fourteen thousand votes had been cast for it. The total number of males over twenty-one, by the census of 1840, was but a little over twenty-six thousand, and, even without deducting any from this number in order to omit those not naturalized, the insane, convicts, etc., the constitution seems to have received the votes of a majority of all the citizens. Nearly five thousand freemen had voted for the constitution, according to the face of the returns, a number more than half as large as had ever voted at a State election.

Propositions were at once made in the General Assembly to accept the constitution, to dissolve the constitutional convention, and to adjourn sine die. These motions were rejected by a vote of fifty-seven to eleven. The legislature also refused to investigate the vote on the constitution, claiming that the whole operation was illegal and void.

The landholders' convention met again in February, completed its labors, and referred its constitution to the people for adoption. By a vote of the General Assembly, all those citizens to whom the constitution would grant the suffrage were permitted to vote for or against the ratification. Three days in March were assigned for the vote. At this point the suffragists took the surprising step of voting, with the charter advocates and those opposed to any change, in opposition to the constitution. Nearly seventeen thousand votes were cast, and the constitution was defeated by a majority of six hundred and seventy-six.

It is difficult to determine how much influence the fact that the constitution was prepared by the landholders had upon the vote, but that it had much there can be no doubt. Many voted against it because they thought it implied a surrender of what they considered an invaluable right, namely, the sovereignty of the people over the government. The difference between the two constitutions was not great. The requirement of a two years' residence, instead of one, and a small property qualification for naturalized citizens were the two features of the landholders' constitution most severely criticised by the

suffragists. The fact that nearly seventeen thousand votes were cast, about double the largest number ever given before, is a proof of a considerable extension of the suffrage. Yet the constitution was defeated and the suffragists practically said, "Our constitution or none."

The Rubicon was passed. Either the "law and order" party or the supporters of the people's constitution must quietly surrender or a civil war would ensue. The sequel is fairly well known. Two governments were elected, rival legislatures took their seats, Governors King and Dorr were both inaugurated, and a desperate struggle appeared imminent. Two months of intense excitement followed. Armed bodies attacked arsenals and threw up fortifications, the garrison at Fort Adams was increased, and martial law was proclaimed by the charter authorities.

Before the end of June the people's government entirely collapsed, and Governor Dorr fled from the State for the third time. After his voluntary return, he was arrested, tried for treason, and condemned to imprisonment for life. He spent one year in confinement, and was then pardoned under a general amnesty act. Though the charter government was entirely victorious, nevertheless it yielded to the public sentiment, and even before the struggle was over, in June, 1842, called a new constitutional convention. This prepared an even more liberal constitution, which was ratified almost unanimously. Under this constitution of 1843 the State has continued without disturbance. In 1888 and 1893, amendments were passed, and the universal suffrage demanded in 1841 has been practically obtained.

In conclusion it may be legitimate to make a brief commentary in connection with the very condensed narrative which has been presented. The entire movement of the suffragists, from the call of the convention up to the election of the government under the people's constitution, was entirely revolutionary. The fact that the proceedings were peaceful up to the 1st of May, 1842, and that no attempt to use force had been made by either of the parties, does not diminish its illegitimacy.

The controversy was entirely unique in character, inasmuch as no agitation over the adoption of a constitution or of amendments to an existing constitution in any of the forty-four States has resembled that of Rhode Island in its peculiar

features. The people, who had waited so long for an extension of the suffrage, had few precedents by which they might be guided. Even the constitution of Connecticut, which superseded the charter of King Charles, was framed by a convention legally summoned by the legislature. The revolutionary conventions that framed the constitutions of Pennsylvania and Delaware in 1789 and 1792, though called in disregard to the previous constitutional limitations, were nevertheless authorized by the legislative bodies of those two States. The only precedent that could be suggested besides those of the period of the American Revolution itself was that of Michigan, in 1836. Even here, however, in the change from a Territory to a State many questions were presented which rendered it very unlike the conditions in Rhode Island.

If we conceive that the movement in Rhode Island was revolutionary, then its failure stamped it as rebellion. If the circumstances in the State rendered a change from the aristocratic to a democratic form of government impossible by legal means, then the revolution might have been justified. Later developments showed, however, that this was not the case. If the revolution had been upheld by the best judgment of the citizens, it might have presented an exceedingly important addition to the history of constitutional government.

Under some circumstances the wild revolutionary scheme of the suffragists might have succeeded. If the great majority of the people of Rhode Island had accepted the announcement of the vote on the people's constitution as an accurate statement of facts, and if the leaders of the movement had proceeded wisely in the establishment of the government which the new constitution created, and if the character of all the leaders had been such that the people could put real confidence in the wisdom of the movement, then the old charter might have given way to the more modern instrument. But all these possibilities failed to be realized, and the minute that it became apparent that the peaceful revolution must be followed by a condition of hostilities, into which the Federal Government might feel compelled to enter, the movement was doomed.

The right step for the suffragists to have taken in March, 1842, was to abandon their constitution and to hasten to ratify that which the landholders had prepared. The agitation would have then accomplished its legitimate result. In failing to take this step and in bringing about the defeat of that constitution

they made the serious mistake of the whole movement. The disastrous struggle which followed, together with the adoption of the second landholders' constitution, of November, 1842, may, perhaps, be said to have definitely furnished the precedent that "all lawful changes in government must be made by and with the consent of the constituted authorities," or, in the words of President Tyler, the existing government must be "altered and abolished and another substituted in its place only by legal and peaceable proceedings, adopted and pursued by the authorities and people of the State."

XXI.—PARTY STRUGGLES OVER THE FIRST PENNSYLVANIA CONSTITUTION.

By SAMUEL B. HARDING.

In speaking of the violence manifested in Pennsylvania by the opponents of the Federal Constitution, Madison says, in one of his letters to Jefferson:[1] "The cause of the inflammation, however, is much more in their State factions than in the system proposed by the convention." In this statement he gives the clew to the whole course of the contest in that State. The most superficial examination of the writings of those participating in it soon brings one face to face with this fact. Yet nowhere in the later writings about the Constitution, so far as the present writer is aware, is this fact taken sufficiently into account. Bancroft quotes this statement from Madison, but gives no elucidation of it; Curtis ignores the question; and Professor McMaster, despite his research in this field, by no means makes clear the relation of State to Federal politics in this connection. A brief account, therefore, of the party struggles in the State during and immediately following the Revolution, and the way in which these influenced the contest over the Federal Constitution, may not be without some general interest to students of American history.

At the beginning of the contest with Great Britain the control of affairs in Pennsylvania was still in the hands of the aristocratic element of the province, which centered in Philadelphia and the richer and more thickly settled counties adjacent thereto, and whose power politically was supported by the requirement of a £50 property qualification for the franchise. To the natural conservatism of this element, resulting from the possession of property and assured social position, there was added the conservatism springing from the religious

[1] February 19, 1788: Madison's Writings, I, p. 377.

principle of non-resistance held by the Quakers, who made up the most considerable portion of this section of the community. Despite the fact, therefore, that the Revolution largely took its origin from and found its most ardent supporters in men belonging naturally to the aristocratic class in Pennsylvania, the assembly lent but a lukewarm support to the patriot cause, and many measures earnestly desired by the patriot leaders failed in that body because of the innate caution and conservatism of its members.

There was, however, another element in the province well suited by temper and circumstances to play the part desired by the radical leaders, if only power in proportion to its numbers could be given it. This was the democracy, the party of the country, as the other was the party of the city. Its strength lay chiefly in the back counties, where the independent life of the settler and farmer, and the practical uniformity of material conditions, naturally stimulated the democratic instinct. As the former was the party of the Quakers and the Germans, this was that of the Irish and Scotch-Irish who had settled the outlying districts. Its temper was naturally averse to taxes and control; for fighting and a little disorder it had the fondness of the Celt. Further, the strong political instinct which seems to mark the Irish race rebelled at the barriers which so largely excluded it from active participation in political life.

With this element, therefore, alliance was early formed by the active patriots. In the election of the extra-constitutional committees of safety and provincial conferences, which play so important a part in the actual government of the period, no property qualification was required. The result was the selection of bodies much more radical than those chosen by the constitutional electors, and the adoption of measures in their sphere satisfactory to the ultra-patriots.

At first there seems to have been no attempt at the subversion of the existing province government. Many of the wisest and most patriotic of the Whigs, including Robert Morris, John Dickinson, Charles Thomson, and Thomas Mifflin, favored the continuance of government under the proprietary charter.[1] Its provisions were well adapted to the emergency. Elections were annual, the assembly met on a fixed day, and the governor

[1] See a letter of Charles Thomson reviewing the subject in Reed's Life of Joseph Reed, I, p. 153.

lacked the power to dissolve or prorogue that body. With the control of the assembly in the hands of the patriot party, constitutional government might be continued, and yet, in the face of a hostile executive, aid and support be given to the American cause. The only real difficulty was to secure control of that body, and this, they believed, patience, persuasion, and the logic of events would soon achieve.

But as the Revolution gathered headway and the majority in the assembly showed itself disinclined, by voting supplies, altering militia laws, etc., to keep pace therewith, the desire arose among the more radical of the Whigs for a new constitution and a new government to supersede the one under the charter. In this condition of affairs the assembly, on November 9, 1775, voted to instruct the Pennsylvania delegates in Congress to "dissent from and utterly reject any proposition, should such be made, that may cause or lead to a separation from our mother country, or a change of the form of this government."[1] The implied challenge was accepted, and the conflict was at once precipitated. Defeated in the assembly, the radicals transferred the contest to the committees of safety. As early as February 28, 1776, a majority of the Philadelphia committee had come to the decision that a provincial convention to revise the form of government was necessary.[2] The defeat of the radicals in Philadelphia at the elections held May 1, 1776, added new incentive to the movement.[3] And finally, the resolution of Congress of May 10, recommending the assemblies and conventions of the colonies to form State governments where there was not already a "government sufficient to the exigencies of their affairs,"—to which, on the 15th, a broader preamble was attached, advising the suppression of all government under the Crown and the substitution of governments based upon the authority of the people alone,—opportunely, if not designedly, gave the requisite sanction to the movement.[4]

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[1] Life of Joseph Reed, I, p. 155. John Dickinson was the mover of the resolution.

[2] Christopher Marshall's Diary, p. 61. The edition of 1877 is the one to which reference is made.

[3] Life of Joseph Reed, I, p. 184. The result in Philadelphia was said to be due to a union of "the Quakers, Papists, church, Allen family, with all the proprietary party." (See Marshall's Diary, p. 68.)

[4] The preamble recites the fact that the King with Parliament has excluded the inhabitants of the colonies from the protection of his Crown,

The same day that this preamble was added the committee of safety for Philadelphia held an adjourned meeting to consider the foregoing recommendation, and it was there decided to "call a convention with speed," and to get up a "protest against the present assembly's doing any business in their house until the sense of the province was taken in that convention to be called."[1] On the 20th the assembly met. That same day a meeting of some four or five thousand persons was held in the Statehouse yard, and a protest to the above effect was adopted, based on the fact that the assembly derived its powers from "our mortal enemy the King of Great Britain," and that it had been elected "by such persons as were in real or supposed allegiance to the said King, to the exclusion of many worthy inhabitants whom the resolve of Congress hath now rendered electors."[2]

Things were fast nearing a crisis. After the 30th of May the ultra-Whig members of the assembly ceased to attend its sessions save long enough to secure the removal of the injunction laid upon the Pennsylvania Delegates in Congress to oppose independence.[3] For the greater part of the time the assembly was thus left without a quorum. On the 28th of September it finally expired, and with it the charter government of Pennsylvania, the last act of the assembly being to enter upon its journals a series of resolutions denouncing the convention by which its functions had been absorbed.[4]

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and is using force to crush the colonies; whence it is concluded that it is "absolutely irreconcilable to reason and good conscience" for the people of the colonies now to take the oaths necessary for the support of any government under the Crown, and that "it is necessary that the exercise of every kind of authority under the said Crown should be totally suppressed, and all the powers of government exerted under the authority of the people of the colonies for the preservation of internal peace, virtue, and good order, as well as for the defense of their lives, liberties, and properties against the hostile invasions and cruel depredations of their enemies; therefore" (Journals of Congress, II, p. 166):

"Resolved, That it be recommended to the respective assemblies and conventions of the united colonies, where no government sufficient to the exigencies of their affairs hath been hitherto established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular and America in general." (Ib., p. 158.)

[1] Marshall's Diary, p. 71.

[2] Life of Joseph Reed, I, p. 186. It is curious to note the extent to which, in this last clause, the paramount authority of the Congress is recognized.

[3] Ib., I, p. 187.

[4] Ib., I, p. 188.

In the meantime a provincial convention for the framing of a State constitution had been elected,[1] and was then sitting at Philadelphia. In it equal representation had been accorded to each county and to the city of Philadelphia. To insure the return of proper persons the franchise in its election had been restricted, on the one hand, so as to exclude Tories and moderate Whigs by the requirement of an oath not "to bear allegiance to George III," nor directly or indirectly to "oppose the establishment of a free government in this province by the convention now to be chosen, nor the measures adopted by the Congress," while on the other it was extended so as to take in all "associators" or militiamen over the age of 21, whether possessed of the £50 property qualification or not.[2] By these means the control in the convention was given to the radical democratic element in the province, and the peculiar features of the constitution which was there produced must largely be ascribed to this fact.[3]

[1] The machinery by which this convention was called was rather peculiar. The Philadelphia committee of safety submitted the resolve of Congress to the county committees of the province with a call for a provincial "conference" to act in the matter. On June 19, 97 delegates, chosen by the county committees, met in such a conference, and they in turn unanimously resolved "that the present government of this province is not competent to the exigencies of our affairs," and issued a call for the convention. (See the proceedings of the conference in Journal of the House of Representatives of * * * Pennsylvania [1776-1781], with the proceedings of the several committees and conventions before and at the commencement of the American Revolution, Philadelphia, 1782 [Michael Hillegas, editor]. They may also be found in an abridged form in the volume entitled Proceedings Relating to the Calling of the Conventions of 1776 and 1790, etc., Harrisburg, 1825.)

[2] Hillegas, Journal and Proceedings, pp. 36, 37.

[3] Other circumstances contributed to this end. The constitution was framed in the midst of war, amid the distractions of other business, and above all in what Gov. Edmund Randolph, of Virginia, speaking of the Articles of Confederation, calls "the infancy of the science of constitutions." The opponents of the constitution in the council of censors issued an address in 1784 in which they allege that errors and ambiguities were "to be expected from the time and circumstances under which the present constitution was formed. Our political knowledge was in its infancy. The passions of the State were unusually agitated. A large body of militia was busy in preparing to march to another State to oppose the progress of the British army. Another body of citizens to the amount of 5,000 was absent on the same service in the Continental Army. Amid the din of arms and the dread of invasion, and when many wise and able men were necessarily absent, whose advice and assistance would have been of great use,

The session of the convention lasted from July 15 to September 28, on which day the constitution was promulgated and the convention adjourned. From the minutes of that body[1] it is apparent that over its proceedings there was considerable contest, in which the minority were led by George Clymer and George Ross, while Franklin and Rittenhouse sided with the majority, but the points in dispute must largely be inferred from the nature of the constitution itself.

In this instrument[2] was provided what is probably the most democratic form of government ever tried by an American State. The constitution consisted of two parts—a bill of rights and a frame of government. In the former, among the usual and some quite unique declarations,[3] all property restrictions on the franchise were removed: the right to vote and be voted

was it reasonable to expect that a constitution could be formed proper for a great and growing State?" (Proceedings Relating to the Conventions of 1776 and 1790, p. 81.)

[1] In Hillegas's Journal and Proceedings; also in Proceedings Relating to the Conventions of 1776 and 1790 (1825). The long session of the convention was due to the assumption by the convention of general legislative, executive, and judicial functions, and the transaction of much business other than that for which it had been called. This was more or less a characteristic of all the Revolutionary conventions.

[2] The constitution is most conveniently found in Poore's Charters and Constitutions; it is also in Hillegas's Journal and Proceedings, and several pamphlet editions are in existence.

[3] The following are some of the most noteworthy declarations:

"III. The people of this State have the sole, exclusive, and inherent right of governing and regulating the internal police of the same.

"IV. All power, being originally inherent in and consequently derived from the people, therefore all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them.

"V. Government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single man, family, or set of men, who are a part only of that community, and * * * the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish government in such manner as shall be by that community judged most conducive to the public weal." [The last clause of this paragraph is important as affording later the basis for the extra-constitutional convention by which the constitution of 1776 was revised.]

In addition to the above, section 43 of the frame of government, which clearly belongs in the declaration of rights, secures to the inhabitants of the State the "liberty to fowl and hunt in seasonable times on the lands they hold and on all other lands, * * * not inclosed," and the same as regards fishing.

for was declared to be in "all free men having a sufficient common interest and attachment to the State." In the latter, the supreme legislative power was vested in a single house, unchecked by any other branch. Elections to it were annual, service in it was limited to four years in seven, and representation was proportioned to the number of taxables. The executive power was placed in the hands of a supreme executive council, whose president was a mere presiding officer. In this body each county, irrespective of population, had one representative, whose term of office was three years, followed by a four-year period of ineligibility. All executive power, including the appointing power and the granting of pardons, was vested in this body, and in addition its members were ex officio justices of the peace for the whole State. From all officers of government, whether legislative, executive, judicial, or military, an oath of allegiance to the State was required in the following form:

I, ——— ———, do swear (or affirm) that I will be true and faithful to the Commonwealth of Pennsylvania, and that I will not *directly or indirectly* do any act or thing prejudicial or injurious to the constitution or government thereof, *as established by the convention.*[1]

The most singular feature of this singular constitution, however, is yet to come. Every seventh year, it was provided, a council of censors was to be elected, who were to hold office for one year. In this, as in the executive council, the representation was to be the same for each county, namely, two persons, no matter what the population might be. Its business was to "inquire whether the constitution has been preserved inviolate in every part, and whether the legislative and executive branches of government have performed their duty as guardians of the people, or assumed to themselves or exercised other or greater powers than they are entitled to by the constitution." Its remedial powers, however, extended only to ordering impeachments, passing public censures, and recommending repeals. In it alone was vested the power of initiating amendments to the constitution.[2] If, it was provided, there should

[1] The italics are mine.

[2] In the preamble it is stated that "the following declaration of rights and frame of government [are proclaimed] to be the constitution of this Commonwealth forever, unaltered, except in such articles as shall hereafter on experience be found to require improvement; and which shall, by the same authority of the people fairly delegated, as this *frame of government* directs, be amended," etc. [The italics are mine.] This certainly

appear to the censors "an absolute necessity of amending any article of the constitution which may be defective, explaining such as may be thought not clearly expressed, and of adding such as are necessary for the preservation of the rights and happiness of the people," they might call a convention, to meet within two years after their sitting, to effect such alteration; but in two ways the power to amend was hedged about. In the first place, in the calling of a convention the power of the censors was restricted by the requirement of a two-thirds vote; in other matters a mere majority was sufficient. In the second place, the convention when called could only consider such specific amendments as had been promulgated by the censors at least six months before the day appointed for the election of delegates—this previous publication being, as the section went on to say, to enable the people to "have an opportunity of instructing their delegates on the subject."[1]

The chief authors of this scheme of government, "with its plural executive and single legislature, and its universal oath of office * * * not to alter or to counsel or attempt the altering of a single feature of it,"[2] are said to have been George Bryan, of whom we hear much from now on, and James Cannon, a schoolmaster of Philadelphia, who had taken an early and active part in the committee work of the Revolution.[3] The single legislative assembly is said to have been the work of Dr. Franklin, who to the end of his days retained his dislike for an upper house.[4]

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seems to preclude amendment in any mode other than through the agency of the council of censors, despite paragraph 5 of the declaration of rights. (See above, p. 376, note 3.)

[1] The only other State which has ever tried anything approaching a council of censors is Vermont. In the constitution adopted there in 1777 the Pennsylvania provision for a council of censors was copied almost verbatim, through the influence, apparently, of one Thomas Young, a citizen of Philadelphia, who had taken an active part in the Vermont movement for a constitution. In the latter State this feature of government proved more of a success than in Pennsylvania, and lasted certainly down to 1862. (See Jameson, Constitutional Conventions (1869), pp. 139 and 211.)

[2] Horace Binney, in Penna. Mag., vol. 14, p. 11.

[3] Graydon's Memoirs, pp. 286, 287.

[4] See Sparks's Life of Franklin, pp. 408, 409, where this provision is said to have been carried after a brief speech by Franklin, who sat as president of the convention, in which he compared a legislature with two branches to a loaded wagon with a team at each end pulling in opposite directions. A pamphleteer of the time, while not ascribing the origin of this fea-

The constitution thus established was not then or ever submitted to the people for ratification, though a large proportion of the inhabitants of the State soon manifested signs of dissatisfaction with some of its most essential features. In less than two weeks after its promulgation "a severe satire" upon it appeared in one of the Philadelphia papers.[1] On the 21st and 22d of October, meetings attended by more than 1,500 people were held at Philadelphia, in which resolutions for a change in the frame of government were carried by a "large majority."[2] On November 5 elections for assemblymen and councilors to put the new government into execution were held. In both Philadelphia City and County the opponents of the constitution easily elected their ticket, and the voters there being called upon to pass on the question of councilors or no councilors at the same time, this provision of the constitution was condemned by a vote of more than two to one.[3]

"The party who believe the government to be a good one," said one writer, "is too inconsiderable to be noticed;" the only question was, whether to submit till peace came or to call for a new convention at once.[4] The latter was the position generally

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ture to him, says that both he and Rittenhouse supported it in the convention, and then adds: "Divine Providence seems to have permitted them to *err* upon this subject in order to console the world for the very great superiority they both possess over the rest of mankind in everything else except the science of government." (Observations on the Present Government of Pennsylvania (1777), p. 12.)

The origin of the council of censors some thirteen years after the convention was ascribed (whether in jest or earnest I can not say) to a waggish member, who moved this as a sort of a joke, disliking the proposed system and wishing to make it as ridiculous as possible. (See Pennsylvania Gazette, April 29, 1789.)

[1] Marshall's Diary, p. 95.

[2] Ib., pp. 98, 99. The principal speakers against the constitution were Thomas McKean and John Dickinson; those in favor of it, James Cannon and Timothy Matlack.

[3] The vote stood as follows: Philadelphia City—Councilors, 211; no councilors, 406. Philadelphia County—Councilors, 133; no councilors, 370. (Marshall's Diary, p. 102).

[4] Observations on the Present Government of Pennsylvania (1777), pp. 20, 21.

The position taken by the moderate supporters of the constitution is illustrated by the following quotation from a letter written by Thomas Wharton, the first president of the council: "True it is," says he, "there are many faults which I hope one day to see removed; but it is true that if the government should at this time be overset it would be attended

taken in the eastern section of the State. Extensive petitions from the inhabitants of Philadelphia and vicinity were the next year presented to the assembly, praying for a new convention.[1] That same day (June 11, 1777), the supreme executive council—despite the provision of the constitution governing amendments—was induced to submit to the assembly a proposition to "take the sense of the majority of the electors throughout the counties on the important question whether a convention be holden at some proper time to reconsider the frame of government formed by the late convention."[2] On June 17 this proposition was acceded to by the assembly, and the date and mode of obtaining a fair expression of opinion were agreed to. Before this could be carried out, however, came the invasion of the State by the British; and on account of this and certain "other circumstances" not specified in the published records, the measure was not carried into effect.

By this time the opponents of the constitution were not only thoroughly dissatisfied with the frame of the government, but also with the way in which it was being administered. "I have not time nor patience," wrote one of them to a friend, "to mention in how many instances the assembly has infringed the *inviolable* frame of government, or to point out the impropriety of some late appointments; it is sufficient to say that the late steps give infinite dissatisfaction to the men of property and understanding. *The clamors of the red-hot patriots have subsided into easy places and offices of profit.* The posts of mere *trust* go a-begging. No one can be found to accept *them.* Whenever I reflect on the times I am seized with the blue devils; I walk about the room in a sweat, look at my family, and wish them and myself out of the way of vexation."[3] Accordingly, at the annual elections in the fall of 1778 they made

with the worst consequences, not only to this State but to the whole continent, in the opposition which we are making to Great Britain."—Penna. Mag., vol. 5, p. 436. This was also the stand taken by William Findley and Thomas Paine. See respectively in Penna. Mag., vol. 5, p. 440, and Pennsylvania Gazette, April 12, 1786 (article signed "Common Sense").

[1] Hillegas: Journal and Proceedings, p. 142.

[2] Colonial Records ["Pennsylvania Archives"], Vol. XI, p. 220.

[3] Judge Yates to Colonel Burd, Lancaster, March 29, 1777. In Letters and Papers relating chiefly to the Provincial History of Pennsylvania [Shippen Papers] (privately printed, 1855), p. 258, 259. The italics are in the printed copy.

strenuous exertions to overturn the dominant party,[1] and made considerable gains. In the assembly which followed, the advocates of revision refused to take the oath of office, save with a reservation of their right to work for amendments.[2] In their endeavors for a new convention they were again so far successful as to procure the passage of a resolution to take the sense of the people on the subject, and the details for a special election by which this was to be done were all fixed, together with a list of the changes proposed to be made in the constitution.[3] Again, however, the movement came to naught; for before the day set for such special election had come, petitions signed by more than 10,000 persons were procured from the back counties against the proposed step,[4] and on the 17th of February, 1779, by the overwhelming vote of 47 to 7, the assembly ingloriously rescinded its measure.[5] This seems like

[1] On October 10, 1778, Judge Yates wrote Colonel Burd: "I have been doing little for these ten days past but electioneering. Matters have come at length to that pass that it becomes every good man to turn out and endeavor to procure a proper representation for the county he lives in. The many violations of the constitution by the late assembly have given the people at large the most general uneasiness and disgust, and strike the most ignorant with the propriety of an exertion at the ensuing election. * * * In the city of Philadelphia, and other counties, every nerve will be strained to effect a change of men and measures." (Shippen Papers, p. 267.)

[2] Twenty-five members out of a total of 59 took the oath thus. The reservation was as follows: "The subscriber hereby expressly reserves to himself full liberty to adopt or pursue such measures as he may judge necessary for collecting the sentiment of the people on the subject of calling a new convention to revise, alter, amend, or confirm the said constitution, and reserving also full liberty of cooperating as well with his fellow-citizens in calling the said convention as with the said convention if called." (Hillegas: Journal and Proceedings, p. 232.) The allowing members to make this reservation was one of the acts reprobated and declared unconstitutional by the council of censors in 1784.

[3] Hillegas: Journal and Proceedings, pp. 246, 247. Both this and the similar act of the assembly of 1777 were declared by a committee of the council of censors to have been in violation of section 47 of the constitution. (Proceedings relating to the Conventions of 1776 and 1790, p. 111.)

[4] Hillegas: Journal and Proceedings, pp. 323, 324.

[5] Robert Morris, Thomas Mifflin, and George Clymer were of the minority, and joined with the others in a spirited protest to this action. (See Hillegas's Journals and Proceedings, p. 324.) The supposition of an agreement reached about this time to defer the subject of amendments till the election of the council of censors (see below, p. 385) may help explain the overwhelming vote by which the motion to rescind was carried.

prima facie evidence that the friends of the constitution felt themselves to be an actual minority of the eligible electors under the instrument, and dared not submit their cause to the whole people of the State.

On the other hand, despite the intense opposition which the constitution excited among many, it received the enthusiastic support of a very considerable portion of the inhabitants of the State. "Many," we are told, "support it, at all hazards."[1] Its thoroughly democratic character won for it the love of the populace, especially of the back counties. The alluring prospect of "uniforms and epaulets, with militia titles and paper money, making numbers of persons gentlemen who had never been so before,"[2] stimulated this class to intense enthusiasm for the patriot cause, and the embodiment of that cause they saw in their State constitution. Their leaders, too, of whom many now came to the front, found in the ease with which legislation could be effected under it and the large number of profitable offices placed by it in their disposal means not only to that power so dear to the heart of every politician, but also to a comfortable livelihood.[3] They were certainly very patriotic, but then, as Graydon remarks, the part "is played in very different styles;"[4] and in many cases it is difficult to determine whether patriotism or self-interest was the dominating principle.

The result of the struggles for a new convention, joined to the dissensions which already existed over the question of independence and the "uneasiness and disgust"[5] excited in many persons by the violence of the measures which the popular leaders urged through the assembly, was the crystallization of the already discordant elements in the State into two bitterly antagonistic political parties. By what is almost a perversion of terms, the radical party, which found its ideal embodied in the existing constitution, took the name of Constitutionalists. This was the party of the ultra or "yellow" Whigs. Its strength lay chiefly in the outlying districts,

[1] Yates to Burd, March 29, 1777, Shippen Papers, p. 258.

[2] Graydon's Memoirs, p. 285. The references are to the edition of 1846.

[3] For assertions of the part played by the spoils of office in the contest, see McMaster and Stone's Pennsylvania and the Federal Constitution, pp. 149, 451, etc.; Lloyd's Debates of the Convention of 1787, p. 82; and innumerable places in the Pennsylvania Gazette between 1785 and 1789.

[4] Graydon's Memoirs, p. 288.

[5] Yates to Burd, October 10, 1778; Shippen Papers, p. 267.

where there was little education, no newspapers, and in general scant means of communication or information. It was the party of the democracy—suspicious, bigoted, easily swayed by demagogues to their own ends. Its chief leader was George Bryan, an Irish immigrant, possessed of considerable information and ability, but apparently unscrupulous, and a born politician of a type familiar in our own day. In the convulsions to which Pennsylvania was now exposed he rose to the presidency of the council, and was then appointed one of the judges of the supreme court of the State. In Philadelphia, Timothy Matlack was one of its shining lights; and Franklin, Rittenhouse, and Jared Ingersoll were claimed for it.[1] In the country the efforts of Bryan were ably seconded by Robert Whitehill,[2] John Smilie,[3] and William Findley[4]—a trio almost constantly

[1] Upon Franklin's return from France in 1785 his position was rather that of a neutral. "His demeanor to both parties," says Graydon, "was so truly oily and accommodating that it always remained doubtful to which he really belonged, and while president of the executive council, to which office he had been elected on his return from France, he sedulously avoided voting on questions which partook of the spirit of party." (Graydon's Memoirs, p. 286.) See also his own letters to Thomas Paine (Franklin's Works, Bigelow's edition, IX, p. 266), and to Edward Bancroft (ib., p. 279). Neither Rittenhouse nor Ingersoll took an active part in the contest either way.

[2] Whitehill was the only one of the three born in this country, and he was of north-of-Ireland blood. His entrance into politics was in the constitutional convention of 1776. Of his obstinacy in debate Robert Morris said: "Even were an angel sent from Heaven with proper arguments to convince him of his error, it would make no alteration with him." (Carey's Bank Debates of 1786, p. 77.) To the same effect is the testimony of a moderate Federalist, who, in speaking of his speeches in the ratifying convention of 1787, calls him "the monotonous and pertinacious Whitehill." (McMaster and Stone's Pennsylvania and Federal Constitution, p. 450.)

[3] Smilie was an Irish immigrant whose family had settled in Pennsylvania. His first State service was in the provincial conference of 1775. Almost continuously from 1778 to his death he was prominent in State politics, and he served for nine terms in Congress under the Constitution.

[4] Findley also was an immigrant of Scotch-Irish blood, who finally settled in the western parts. His first State service was in the council of censors of 1783, which, he says, was "the best public school in which I have ever sat." He seems decidedly to have been the ablest and most fair-minded of the three. Morris, in the Bank Debates above quoted, speaks of him as "a gentleman for whose understanding and abilities I have great respect, and who generally supports what he undertakes to defend not only with strength of reasoning, but manages it with candor." (Carey, p. 86.) Findley himself, writing in 1812, says: "Through three

in office, in the assembly or council, and almost invariably in unison upon every detail of political policy.

To this party was opposed those who styled themselves Republicans and whose political platform may be summed up as opposition to the constitution of 1776 and the party by which it was conceived and administered. Among its active leaders were Robert Morris, James Wilson, Dr. Benjamin Rush, George Clymer, Thomas Mifflin, and others whose names are intimately connected with our national history.[1] Here were ranged the Whigs of the "better sort"—the "well-born"—who believed that "power * * * had fallen into low hands."[2] It was preeminently the aristocratic party, and though the pulses of its leaders had "beaten high in the cause of Whigism and Liberty" during the first stages of the struggle with Great Britain, it was more than suspected that the extent to which that struggle had been pushed and the violence which had characterized the administration of internal affairs in the hands of the popular party had considerably cooled them. They were generally the men of property and of education in the State. The lawyers were almost unanimously of this party, and for a time were in substantial agreement not to practice or accept office under the constitution so long as that instrument remained unamended.[3] The Quakers were practically driven into this party by the requirement of test oaths or affirmations which no conscientious member of that society could take.[4] Aside from these elements from the

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of the four years in which by rotation I could serve in the legislature, the parties were pretty generally balanced, and I was allowed to have the principle [sic] influence, and this induced me to be very carefull [sic] to conduct myself with moderation." (See Penna. Mag., vol. 5, p. 444.) In the whisky insurrection of 1794 Findley played a prominent part, and wrote a history of that movement in apology therefor. In later life he served for twenty-four years in Congress from one of the western districts of Pennsylvania.

[1] As an offset to the foreign birth of most of the Constitutionalist leaders, it should be noted that many of the most prominent among the Republicans also were foreign born, viz, Morris in England, Wilson in Scotland, and Fitzsimmons in Ireland.

[2] Graydon's Memoirs, p. 283.

[3] Ib., p. 332.

[4] A clause of the oath which gave particular offense was that requiring affiants to turn informer by discovering to some justice of the peace "all treasons or traitorous conspiracies * * * against this or any of the United States of America" of which they might then know or thereafter

disintegrating Whig party, the Republicans seem also to have courted an alliance with the passive Loyalists who remained in the State,[1] and though by this means their numerical strength was somewhat increased, the additional odium which thereby attached to their party in the eyes of the populace more than compensated for the gain.

After the failures in 1778–79 of the attempt to secure the voice of the people on the question of a new convention, no further efforts were made in that direction for ten years. Some sort of an agreement seems to have been entered into between the friends and the opponents of the constitution[2] to let the matter rest until the council of censors should meet, when amendments might be procured in a constitutional way—by implication, at least, the Constitutionalists promising not to oppose the attempt when that time should arrive.

From 1778, accordingly, party disputes centered in the measures by which the constitution was administered. But the briefest summary can be given here of the course of events. In 1779 the Constitutionalists "got full possession of the government."[3] On October 1 of that year there was then enacted a test law surpassing all previous efforts in this direction, by which it was provided that all white males who had not taken the previous oaths of abjuration and allegiance should, within

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become informed. No neutrals, apparently, were to be allowed save under penalty of loss of citizenship. Those refusing to take the oath were to be debarred from voting or holding office, serving on juries, suing for debt, selling or transferring real estate; were liable to be disarmed, and upon traveling out of their city or county might be arrested as spies. (See the oath in Westcott's Test Laws, p. xviii.)

[1] Graydon's Memoirs, p. 332.

[2] Various traces of such an agreement are to be found, for example in the letters of Gen. Joseph Reed of this time (see Reed's Life of Reed). In Stillé's Life of Wayne, p. 303, is also an assertion of such an agreement. Thomas Paine, with characteristic egotism, ascribes the cessation of attacks in the papers upon the constitution after 1779 to the fact that at that time he lent the aid of his pen to the Constitutionalists. (See Pennsylvania Gazette, April 12, 1786.)

[3] Paine ("Common Sense") in Pennsylvania Gazette, April 12, 1786. 1779 was a crisis year in Pennsylvania, when the rise of all prices, actually due to the depreciation of the currency, but ascribed to "forestalling," "engrossing," and kindred abuses practiced by Tories and Moderates, was just beginning severely to be felt. This fact appears to be of prime importance in explaining the Republican reverse of that year, and also the riot at Philadelphia October 4, 1779. (See note 2, p. 386.)

sixty days, take a yet more stringent oath on pain of forfeiture of their civil rights.[1] By this act "several thousand persons," including "many valuable Whigs" who were "principled against war," were excluded from all active participation in public affairs. Other measures of equal violence followed; in short, the political condition from 1778 to 1781 can not better be expressed, from the Republican point of view, than in the words of a correspondent of Gen. Charles Lee. "Poor Pennsylvania," he laments, "has become the most miserable spot upon the surface of the globe. Our streets, alas, have been stained already with fraternal blood, a sad prelude we fear to the future mischiefs our constitution will bring upon us; they call it a democracy—a mobocracy in my opinion would be more proper. All our laws breathe the spirit of town meetings and porter shops."[2]

In this condition, affairs continued until 1781. In that year the Republicans succeeded for the first time in getting control of the assembly, and for the next three or four years the administration of government was practically in their hands.

[1] For the date of this act see Hillegas's Journals, etc., p. 379. For the oath and arguments against the act see a pamphlet entitled Considerations upon the Present Test Law (2d ed., 1785). The material portion of the oath was as follows: "I, A. B:, do solemnly and sincerely declare and swear, or affirm, that the State of Pennsylvania is and of right ought to be a free, sovereign, and independent State; and I do forever renounce and refuse all allegiance, subjection, and obedience to the King or Crown of Great Britain. And I do further swear that I never have, since the Declaration of Independence, directly or indirectly, aided, assisted, abetted, or in any wise countenanced the King of Great Britain, his generals, fleets or armies, or their adherents in their claims upon these United States, and that I have ever since the declaration of the independence thereof demeaned myself as a faithful citizen of this or some one of the United States; and that I will at all times maintain and support the freedom and sovereignty and independence thereof." (Considerations on the Test Law, p. 3.)

[2] See letter of October 24, 1779, signed "An Old Friend," in Memoirs of Charles Lee (London, 1792), p. 286. The author of this and other letters over the same signature was probably Dr. Benjamin Rush. The bloodshed alluded to occurred at Philadelphia October 4, 1779, when a mob of the ultra-Revolutionists attacked the house of the eminent patriot, James Wilson, where he and some thirty others of the Republicans had barricaded themselves. Wilson's offense seems to have consisted in defending in his professional capacity certain Tories on trial on various charges; but see also note 3, p. 385. For very full contemporaneous accounts of this riot see Life of Joseph Reed, Vol. I, p. 149 et seq., and Vol. II, appendix; also, Penna. Mag., vol. 5, p. 475.

In 1783 a council of censors was elected, and during this and the next year held several sessions.[1] In it, owing to the

[1] The journal of the council of censors, a committee report, and some other matter relating to its sessions was printed in German and English at the time. Its proceedings may also be found in the volume entitled Proceedings Relating to * * * the Conventions of 1776 and 1790. (1825.) But as all these sources are comparatively scarce a synopsis of the proceedings is given here. The council met November 10, 1783, and organized with the election of Frederick A. Muhlenberg, who was later to be Speaker of the first Federal House of Representatives, as president. It held two sessions, the first lasting until January 21, 1784, and the second beginning June 1 and continuing until September 25. In the first session the Republicans had a majority of the members present. Two committees were appointed, the one "to inquire whether the constitution has been kept inviolate," and the other to consider what alterations, if any, were necessary in the constitution.

On January 17 the latter committee reported, proposing two houses to the legislature, a single executive, life terms for supreme judges, and no compulsory rotation in office; and this report was adopted, 12 to 9, on every point. But as this was less than two-thirds of the whole, the Republicans had to content themselves with issuing (by a vote of 12 to 10) an address to the people, whom they styled "the sovereigns of Pennsylvania," urging them to initiate a revision of the constitution through agencies other than the council of censors. "Nothing," the address says, "can be obligatory on you which is contrary to your inclinations or repugnant to your happiness." In the second session, however, the Constitutionalists had more of their members present and controlled proceedings. By a vote of 14 to 10 it was then "*Resolved*, That there does not appear to this council an absolute necessity to call a convention to alter, explain, or amend the constitution." Thus the movement for amendments failed.

The final report of the committee on violations was not handed in until August 5. By repeated additions to its numbers, the Constitutionalists had secured a majority of its members, hence the report was strongly Constitutional. "Various and multiplied instances of departure from the frame of government" were reported, among which were: (1) Acts for seizing goods for the use of the army and setting prices on them, and also acts fixing the prices of commodities; (2) the permitting members of the assembly to hold other offices at the same time (the office of county treasurer, etc.); (3) the allowing assemblymen in 1778 to take the qualified oath of allegiance; (4) the passing of many bills without publication, and at the same session, against section 15 of the constitution; also legislation by resolves only, unpublished and undeferred (among others, the assent to the Congressional scheme of 1783 for changing the mode of assessing quotas); (5) the assumption by the assembly of power to appoint to office in cases not reserved to it by the constitution; (6) the withholding of trial by jury in many instances; and (7) the recognition in the bank act of 1782 of the right of Congress to erect corporations. But on the general subject of the constitution the committee said: "The supposed

equal representation of counties and the requirement of a two-thirds vote to call a convention, the Constitutionalists had full control. The proposition to call a convention to take into consideration certain amendments to the constitution was defeated by them, and the agreement of 1778–79—if such existed—was broken. The indignation of the Republicans was intense. "The rascals know well enough," wrote Frederick A. Muhlenberg, then the president of the council of censors,[1]

doubts and difficulties, the contradictions and absurdities imputed to the constitution, which have been industriously and insidiously suggested to the people as rendering it an impracticable system of administration, and as justifying acts of government in violation of it, have vanished before us as we proceeded." This report was then adopted by a vote of 14 to 9.

Finally, the day before its adjournment, the council, by a vote of 12 to 9, adopted an address, saying: "We are firmly persuaded that the constitution of Pennsylvania needs only to be faithfully administered by men who are honestly disposed to support it according to its true spirit and intentions [i. e., by the Constitutionalists, who were then out of power] to be the best system of government in the world."

[1] To his brother, June 28, 1784. The letter is excellent as showing the tone of party feeling. "The blind passion and mad party spirit of the common crowd," says he, " * * * * are so strong and bitter that they would rather put up with three times as many defects of the constitution than with a convention. But is this not a real aristocracy when a few leaders of the party, by untiring effort, manage to withhold from the people, of whom their power is derived, the people's own power? Do they not betray a ridiculous fear that in a convention based upon equal representation of the people (for such does not exist in the council), the people might alter the constitution? * * * Is it just that 1,500 taxables in Washington, Bedford, Westmoreland, or other back counties, who, by the way, have paid little or no tax during this Revolution, should have as much to say in the council of censors as 8,000 from Lancaster, or 7,000 from Philadelphia, who bear the burthen of the State? * * * Take the real number of taxables each member of our council represents, and you have a great majority of the good people of the State for a convention. * * * In brief, the whole thing is a farce, costs the State five thousand or six thousand dollars, keeps the people in a ferment, and is not worth a farthing. I am ashamed to be a member, and if it might not be said, 'You forsook the vessel in the storm,' or 'You are afraid to weather it out,' I would have resigned long ere this; perhaps I should do so yet, for I can neither before God nor the world answer for thus wasting my precious time, robbing the State, and doing only mischief. The fellows from the back counties now hope to stay here till next October to draw their 17s. 6d. and to return home with a well-filled purse. Some of them will get at the end of the session more money than they ever had in their lives. In short, dear brother, I am losing patience and draw a deep sigh at the corrupt political condition of our State." (Penna. Mag., vol. 13, pp. 199, 200).

"if the intelligent part of the people and, I assert also, if a majority of the people were properly and equitably represented in the convention, that a change would be the consequence, and they would be unhorsed."

Nevertheless, owing to the intemperance with which the Republicans urged amendments, to the economic evils following on the heels of peace and for which the party in power was held responsible, and to the active exertions of their opponents, by "a turn of the elections" the Constitutionalist party was reinstated in power in 1785. Their action thenceforth was more violent than ever. The State charter of the Bank of North America, which a Republican assembly had granted in 1782, was repealed—clearly in violation of all law and justice.[1]

[1] For the struggle over the bank, see Considerations on the Bank of North America (1785); "Remarks," on the above (1785); Matthew Carey's Debates and Proceedings * * * on the Memorials Praying a Repeal * * * of the Law Annulling the Charter of the Bank (1786); Paine's articles on the bank in the Pennsylvania Gazette, 1785–86, etc.

The chief objections alleged against the bank were three: (1) A "progressive diminution of the circulating medium" must ensue, owing to the limited ability of the bank to supply circulation and its interested hostility to the issue of other paper, whence would result a "high rate of money," discouraging agriculture and immigration, encouraging importation, and "expediting the transportation of gold and silver to other countries." (2) Its large capital ($10,000,000),. small number of directors (twelve), and unlimited duration, coupled with the natural conflict of interest between it and "the State" (i. e., the agricultural interest) as to paper money, made its political influence dangerous. (3) It was adopted merely to facilitate, not to augment, circulation, and hence was beneficial only to the mercantile class. (See "Remarks," etc., above.)

Paine, who had supported the Constitutionalist cause hitherto, broke with that party on this issue. He had attempted to dissuade Smilie, who seems to have headed the movement, from this measure, warning him that it "would ruin the whole interest of the Constitutionalist party" and "overset the constitution," but in vain. The moving cause of the opposition to the bank Paine charges to have been the self-interest of certain moneyed citizens of Philadelphia, especially of "Mr. George Emlen," with whom Smilie et al. had formed a coalition. (Pennsylvania Gazette, April 12, 1786.)

The revocation of the charter was carried by a vote of 50 to 12. In the next assembly (1786) a committee reported that "the report made to the late house [which had led to the repeal of the charter] was grounded in general notions preconceived, or on the current popular opinions and speculations;" that that committee had not investigated the bank or made any charges against its administration, and that it had been denied a hearing in the house until after a second reading and publication of the

A loan office—"one of the most masterly strokes of national good sense," as it was characterized by John Smilie[1]—was then set up in its stead for the issue of more paper to swell the volume of the already depreciated currency. To petitions of the nonjurors for readmission to the rights of citizenship a deaf ear was long turned, and the official recommendation of President Franklin alone procured for them a tardy and partial amelioration of their lot.[2] Two measures were then passed, by a deal through which it was sought on the one hand to conciliate certain city adherents, and on the other to gratify the back-county settlers.[3] The first of these was a funding measure, by which Pennsylvania agreed to pay the interest on all the Federal debt held by its citizens, thus assuming a much larger proportion of the same than was her just quota. The other was a land law, by which State lands were to be sold at a price fixed, it was alleged, considerably below their market value. Finally, a new election law was passed, which their opponents charged was directly in the interest of their own party.[4] No limitations imposed by their boasted constitution,

bill, and therefore the repeal of the repealing act was recommended. This report was then debated for about a week, Robert Morris (a stockholder), George Clymer (a stockholder and director), and Thomas Fitzsimmons taking the lead on the Republican side, while Robert Whitehill, William Findley, and John Smilie spoke for the Constitutionalists. The report was then rejected by a vote of 28 to 41.

I have gone thus fully into the details of this measure because it unquestionably contributed more than any other element to the overthrow of the Constitutionalists in 1786 and secured the submission of the Federal Constitution to a Republican assembly.

[1] Carey's Bank Debates, p. 124.

[2] Act of March 4, 1786. An oath or affirmation was still required renouncing allegiance to George III, promising to "bear true allegiance to the Commonwealth of Pennsylvania as a free and independent State," and declaring that the affiant had not, since the Declaration of Independence, "voluntarily joined, aided, assisted, or abetted" the British forces. A petition was presented from Dauphin County about this time, signed by 144 persons, in which armed resistance was threatened if the nonjurors were admitted to citizenship. The total repeal of all laws requiring an oath or affirmation of allegiance to the State was not secured until March 13, 1789. (See Pennsylvania Gazette, March 18, 1789.) The best account of the prolonged struggle on this subject may be found in Westcott's Names of Persons who took the Oath of Allegiance, * * * with a History of the Test Laws.

[3] Pennsylvania Gazette, May 4, 1785.

[4] Among other objections the Republicans alleged that the polling places were so placed that members of their party must travel long distances in order to vote. (See Pennsylvania Gazette, September 21, 1785.)

it was claimed by the Republicans, could hinder the party in power from achieving their ends. "Those gentlemen who pretend to be Constitutionalists," exclaimed one assemblyman in 1786, "thought themselves exempt from attending to the constitution; they made it a nose of wax, which they twisted at pleasure."[1]

Despite the active canvass made by the Republicans in 1785 their opponents were again successful at the election held in the fall of that year. By the next election, however, the tide had turned. The violence of the last two sessions—especially the unwarranted and unjustifiable measures against the bank—failed to meet with the approbation of the more moderate and intelligent of the citizens, and the result was the election of a strongly Republican assembly.

This, then, was the situation in Pennsylvania when the people were called to pass upon the momentous question of the new Federal Constitution. In the State were two parties, embittered by a dozen years of violent struggle. On the one side, and for the moment in power, stood the greater proportion of the men of property, of education, of large ideas, and federal views; six of the eight delegates sent by the State to the Federal convention had come from their number, and the other two—Franklin and Ingersoll—if not neutral, were at most but moderate Constitutionalists.[2] On the other side the leadership had been assumed by men of obscure birth, of little education or property, and of the narrowest views. Small wonder, then, that the cause espoused by the first met with the violent condemnation of the second, and that the contest which ensued was unprecedented in virulence and animosity.

Before the work of the convention had been made public, it was anticipated that the Constitution would be such a one as would strengthen the Republican cause. "The new Federal

[1] Carey's Bank Debates, p. 114. To the same effect is the testimony of a writer signing himself "A Citizen," in the Pennsylvania Gazette for September 28, 1785: "The constitution," wrote he, "which ought to be the bulwark of the people's rights and privileges, has been trod under foot, and a majority of the present assembly, rather than relinquish the scheme of governing for their own benefit exclusively, would sacrifice the constitution itself and all its real friends."

[2] Findley had declined an appointment to the convention because no "wages" were to be paid, and he, as a poor man, living remote from the seat of deliberations, could not afford to attend at his own expense. (See his letter to Plummer, in Penna. Mag., vol. 5, p. 444.)

Government." Rush had written to Pickering, August 30,[1] "like a new continental wagon, will overset our State dung cart, with all its dirty contents, reverend and irreverend, and thereby restore order and happiness to Pennsylvania." All Republicans, accordingly, were prepared to accept it. On the other hand, as early as July—so it was asserted[2]—the leaders of the Constitutionalists had agreed that if the plan proposed interfered in the least with the constitution of Pennsylvania it ought to be rejected.

On September 17, 1787, the Federal convention rose from its long session and transmitted the result of its labors to Congress. At 11 o'clock the next morning Franklin and the other delegates from Pennsylvania waited upon the assembly of that State and laid a copy of the Constitution before it. At first the Republican leaders seemed disposed to await the formal submission of the new plan by Congress. But the action of that body was unexpectedly delayed; the 29th was the day set for the final adjournment at the assembly, and the friends of the new Constitution found that they must take some decisive step, else the question would go over to the next assembly, which might or might not be of the same political complexion.

Accordingly, on the morning of the 28th, a series of resolutions was unexpectedly introduced, arranging the details for a convention to pass upon the proposed frame of government. The Constitutionalists were taken unawares. They protested loudly against the precipitancy of the measure, but in vain. They were outnumbered, and before the adjournment for the midday recess the first resolution, that a convention be called, was carried by a vote of 43 to 19. Then the Constitutionalists absented themselves to break the quorum and prevent the fixing of the necessary details of time, place, etc.[3] For a while

[1] Upham's Pickering, II, p. 301.

[2] See newspaper extract in McMaster and Stone's Pennsylvania and the Federal Constitution, p. 114.

[3] Not all, however; nine of that party remained and acted with the Republicans in this matter. (See McMaster and Stone's Pennsylvania and the Federal Constitution, p. 110.) The presence of two-thirds of the members was necessary to constitute a quorum, under the State constitution. A similar attempt to block legislation by breaking the quorum by concerted absence had been made by the same party in 1784, when a proposition was under consideration to mitigate the rigors of the test laws. It is curious to note, also, that exactly the same number, namely, nineteen members, were concerned in it. (See Westcott's Names of Persons taking the Oath of Allegiance, etc., p. xxxiv.)

it looked as if these tactics would succeed and the call be aborted. But on Saturday, the last day of the session, two of the bolting assemblymen were forcibly hustled into the Statehouse by a mob of Philadelphia citizens, and with a quorum thus secured the call was perfected and the assembly adjourned sine die.

It is easy, of course, to understand the reasons which operated with the Republicans in inducing them to this step, but the seriousness of the consequences to the Federal cause which followed therefrom, not only in Pennsylvania, but throughout the Union, is not thereby lessened. The opposition which before was merely latent among the Constitutionalist leaders, at once became active. The division over the Federal Constitution came to be largely on the lines of the existing division over the State constitution, with the relations reversed. The Republicans "to a man" became Federalists. With them, it is true, acted on this issue "many of the wisest and best Constitutionalists."[1] But under the "maddening jealousy of partizanship"[2] the major portion of the latter party, including its active leaders, Bryan, Whitehill, Findley, and Smilie, became bitter and vehement opponents of the proposed scheme of government. "The unaccountable zeal and precipitation" with which the Republicans sought to "hurry the people into a premature decision"[3] aroused the jealousy and suspicions of the back-country settlers, and this being artfully fanned by the Constitutionalist leaders resulted in an opposition which was the most vehement experienced in any State, and which lacked little of ending in armed conflict.

The essence of the objections urged to the proposed Constitution was that it was anti-democratic. "The present con-

[1] Pickering; see Upham's Life of Pickering, II, p. 340.

[2] This is the cause assigned by a moderate writer in the Pennsylvania Gazette, February 6, 1788. Among other causes for the opposition, Republicans charge: (1) The fear of the Constitutionalist leaders lest they should have fewer offices and smaller salaries for themselves and their friends; (2) a fondness for paper-money, tender and bankruptcy laws, and (3) the knowledge that under the new order of things the collection of taxes would be more rigidly enforced. (See McMaster and Stone's Pennsylvania, etc., p. 83.)

[3] Petition for delay presented to the ratifying convention. (See McMaster and Stone's Pennsylvania and the Federal Constitution, p. 432.)

spiracy," wrote the author of a long series of articles,[1] "is a continental exertion of the well-born of America to obtain that darling domination which they have not been able to accomplish in their respective States." The success of this line of argument is shown by the results of the election for delegates to the ratifying convention. In four counties—Lancaster, Berks, Westmoreland, and Dauphin—the anti-Federalists made gains over their showing in the assembly, amounting to 8 votes. In three counties—Northumberland, Washington, and Franklin—they supported losses amounting to 5 votes; but 2, at least, of these were cast in the convention against the wishes of the people of the county, making 5 votes the net gain.[2] In the convention which met at Philadelphia on November 21, a question arose almost immediately which afforded a test vote as to the strength of the parties in that body.[3] The division recorded is exactly the same as that on the final question of ratification, except that one member who finally votes with the Federalists here sides with their opponents. His conversion, therefore, if conversion it was, must be taken as the sole tangible result of the three weeks' debate in the convention, though interspersed with some of the ablest and most elaborate speeches in the Federal cause made anywhere during the contest in the several States. Even after the convention had ratified the Constitution by the vote of 46 to 23 the opposition continued with unabated violence. The validity of that ratifi-

[1] The letters signed "Centinel." These are reprinted in McMaster and Stone's Pennsylvania, etc., where this extract may be found, p. 627. To the same effect as this is a statement made by Smilie in the ratifying convention just before the final vote was taken. "Since the peace," said he, "there has been a set of men from New Hampshire to Georgia who could not bear to be on the same footing with other citizens. I can not tell how many of these men were in the [Federal] convention." (Wilson's notes, in McMaster and Stone, p. 785.) In this same connection should be taken the prophecy of Findley in the convention, clearly a reminiscence of that of George Mason: "This government," said Findley, December 6, "may go into the channel of monarchy, but more likely of aristocracy; I could not contrive a better plan than this for introducing aristocracy." (Wilson's notes, ib., p. 778.)

[2] The basis of this computation is the assumption that the vote calling the convention, and that in the convention on the question of ratification, were party votes. See below for justification of this last. The yeas and nays in each case may be found in McMaster and Stone.

[3] This was the question whether the Constitution should first be taken up in committee of the whole.

cation was denied,[1] the appeal to arms, if not actually advised, was countenanced and condoned;[2] and, in short, it was, as Madison wrote in the letter before quoted, only the acceptance of the Constitution by Massachusetts, the next large State to consider the matter, that averted very serious consequences in Pennsylvania.[3]

On the question of the adoption of the Federal Constitution, a majority of the people of the State was undoubtedly on the Republican, or Federal, side. At the annual elections of 1787 and 1788, accordingly, and at the general election for Congressmen in the latter year, the Federalists carried the State by safe majorities.[4] Elated by their success on this issue, the

[1] See the address giving the reasons of dissent of the minority of the convention, in McMaster and Stone, pp. 454–483.

[2] Take as an example the riots at Carlisle in December and March, 1787, and 1788 (Shippen Papers, p. 289; McMaster and Stone, p. 486, etc.), and the anti-Federalist comment thereon (e. g., in McMaster and Stone, p. 494). In an address adopted at Carlisle in February, commending the conduct of the minority in the ratifying convention, it is asked whether the people will "submit to be circumvented or cajoled out of their freedom and invaluable rights by a few petty domestic tyrants," and to this an emphatic "no" is returned. (See McMaster and Stone, pp. 498–501.)

[3] In the circular letter calling the Harrisburg convention of September, 1788, one of the objects of that meeting is stated to be to avert the "calamities of a civil war." (See McMaster and Stone, pp. 552, 553.)

[4] The vote for Congressmen was not by districts, but on a general ticket. The vote (exclusive of Fayette County, for which I have not seen the returns) stood: Federalist, highest, 8,697; lowest, 7,074. Anti-Federalist, highest, 7,415; lowest, 5,856. As the highest two anti-Federalist candidates received more votes than the lowest two Federalists, they were elected. The Federalists, however, elected the other six. (See Pennsylvania Gazette, December 24, 1788, for the returns by counties.) The distribution of Federal and anti-Federal areas corresponding to the vote in the ratifying convention may be seen in the map accompanying Orin G. Libby's monograph, The Geographical Distribution of the Vote of the Thirteen States on the Federal Constitution. (Bulletin University of Wisconsin, Vol. I, No. 1.) But to obtain an approximately accurate conception of the division among the people, it must be borne in mind: (1) That the northwestern third of the State, which was joined to Northumberland County, and is figured by Mr. Libby as Federal, had less than two inhabitants to the square mile in 1790—in fact, was practically an unsettled wilderness in 1787; (2) that the two votes of Northumberland County were cast in the convention for the Constitution through the influence of the Continental officers, who everywhere favored the Constitution, and who here procured the election of two of their number as delegates (Pennsylvania Magazine, Vol. XI, p. 272); for Congressman the county was safely anti-Federal; (3) that the Federal vote cast from Franklin County was so cast in opposition to the wishes of the majority of the people of the county (Pennsylvania Magazine,

Republican leaders resolved to push at once for a convention to revise the State constitution. A council of censors was to be elected in 1790, but owing to the inequality of representation and the requirement of a two-thirds vote in that body, they had nothing to hope for from its deliberations. As early as December, 1788, the agitation began,[1] and was continued without intermission until the call for a convention was secured. The present constitution, it was urged, "had never received the sanction or the approbation of the people; it was forced upon the State by a few needy men, while the best men of the State were in the field opposing the enemies of their country."[2] Its many absurdities had long exposed the people to ridicule and its corruptions had long oppressed and injured the State.[3] But aside from these grievances of long standing, there were other reasons, it was contended, which now made a change in the constitution imperative. The first was the intolerable expense of the State government, with its 18 councilors (soon to be again increased by the formation of new counties) at 15s. a day, and a president at £1,500, and a vice-president at £500 a year.[4] The second was the conflict which existed in many particulars between the State and Federal constitutions;[5] especially, it was urged, State officers could not take the oath of allegiance to the Federal Government, without perjury, "till they are absolved from their former oaths of allegiance to the constitution of Pennsylvania in its present form."[6] "The call-

Vol. X, p. 447), and (4) that the vote cast by Thomas Scott, of Washington County, for the Constitution was also against the wishes of his constituents (Pennsylvania Magazine, Vol. XI, p. 264; see also Pennsylvania Gazette, November 26, 1788); the vote for Congressmen here was anti-Federal, seven to one.

[1] Pennsylvania Gazette, December 31, 1788.

[2] Ib., February 18, 1789.

[3] Ib., January 14, 1789.

[4] Pennsylvania Gazette, January 14, 1789: This was the Pennsylvania pound and shilling. In order to prevent the exportation of specie, it had been ordered by an act of the assembly before the Revolution that 5s. sterling should pass in the colony for six and eightpence. These sums, accordingly, are only three-fourths of the same amounts in sterling money, excluding the depreciation for paper.

[5] See the resolutions of the assembly of March 24, 1789, in Pennsylvania Gazette, March 25.

[6] Pennsylvania Gazette, December 31, 1788: This was the ground taken by the Constitutionalists in the assembly of 1788–89, who refused to take the Federal oath at the beginning of the session. By August 25, however, all had taken it. (See Pennsylvania Gazette, May 13 and August 26, 1789.)

ing of a convention now," it was said, "is not a matter of choice. The late convention, by adopting the Federal Government, has made it a matter of necessity. If it is not called immediately and the constitution altered we renounce our connection with the Government of the United States. All other language is anti-Federalism."[1]

As early as the 4th of March, 1789, the Republican assemblymen were busy preparing petitions to be circulated in the counties, urging the assembly to call a convention to meet in October next.[2] On the 24th the project was, by a vote of 41 to 16, formally submitted to the people by the assembly. In a series of resolutions,[3] the immediate necessity for amendments is set forth; the inherent power of the people to change their form of government is shown by quotations from the Declaration of Independence and from the State declaration of rights (in which is a clause asserting that "the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish government, *in such manner*[4] as shall be by that community judged most conducive to the public weal"); whence it is concluded that the people are not limited to the mode of amendments prescribed in the constitution;[5] and, therefore, it is recommended to the people, whose right alone to determine the question is recognized, to take the subject of a new convention into consideration—the assembly offering to provide by law for the expenses and to arrange the time and place of meeting if the desire of the people for a convention is signified to them at their next sitting.[6] With this the

[1] Pennsylvania Gazette, March 4, 1789. It is interesting to note the way in which anti-Federalism had by this time come to be a term of reproach.

[2] Ib., March 4, 1789.

[3] Ib., March 25, 1789.

[4] The italics are in the resolutions.

[5] The language of the preamble of the constitution, however, is against this line of argument. See note 2, p. 377. A writer in the Pennsylvania Gazette for April 1, 1789, arrives at the same end by a different line of reasoning. The constitution of 1776, he says, was a compact between the rulers and the ruled. In 1787 the ruled (i. e., the people), by the act of the ratifying convention, broke the compact, as they had a right to do. Hence the rulers are absolved from their oaths to support that constitution, and are free to work for amendments.

[6] The supreme executive council was requested by the assembly to promulgate this recommendation, but, by a vote of 7 to 6, refused compliance therewith. (Colonial Records, Vol. XVI, p. 41.) A majority of the council, however, were said to be unfriendly to the existing constitution. (Pennsylvania Gazette, April 8, 1789.)

assembly adjourned for the summer recess, in order to give its members opportunity to canvass the subject before the people.

As may well be imagined, these maneuvers of the Republicans were stubbornly resisted by the leaders of the opposite party. In a long address to the people,[1] fourteen of the assembly minority endeavor to show that the expenses of Pennsylvania are less than those of Massachusetts or Virginia; that the amendments desired by their opponents (e. g., a second branch to the legislature), will increase rather than diminish expenses; that the ratifying convention, by its adoption of the Federal Constitution, has already repealed those articles of the State constitution in conflict therewith; that the Pennsylvania constitution is "equal to any in the Union," and lastly, that continued anarchy and disorder must result from amendment in the irregular manner proposed. In Cumberland County—notorious already for its anti-Federal violence—many who would otherwise have signed the petitions to the assembly were intimidated therefrom by the threats of the Constitutionalists.[2] John Nicholson, comptroller-general of the State and a leader of that party, was charged in writing by five members of the executive council with not only having advised, but endeavored strenuously to bring others into the measure "of taking up arms to prevent the free and unbiased sentiments of the good people of this Commonwealth being taken in the manner proposed by the general assembly, * * * thereby endeavoring, as much as in him lay, to cause a civil war, and to deluge the country in blood."[3]

But "the professional wielders of the people," as Graydon calls the leaders of the popular party, found "the potency of their incantations most cruelly impaired" by the adoption of the Federal Constitution.[4] In general, the project for amendments seems to have been discussed with "candor and good humor." "Many sensible and learned men, formerly much opposed to alterations," says a correspondent of the Pennsylvania Gazette,[5] "have, without hesitation, signed the petitions to the legislature for calling a convention, convinced that

[1] See Pennsylvania Gazette, April 8, 1789.

[2] Ib., May 13, 1789.

[3] Colonial Records, Vol. XVI, p. 343. [Minutes of the supreme executive council.]

[4] Graydon's Memoirs, p. 343.

[5] September 9, 1789.

though it may have been heretofore prudent to defer a revision of the constitution, this is the happy moment when it will be done with wisdom and moderation." Accordingly, when the assembly met after the summer recess, being "satisfied"—from the petitions returned to it, and from the personal inquiries made by members during the recess—that a convention was the will of the people, a formal call for such was voted September 15, 1789.[1] Delegates were to be chosen the next month at the annual elections; they were to assemble at Philadelphia on the fourth Tuesday in November; were to frame such amendments as they deemed necessary, publish them, and then, after an adjournment of four months, during which the will of the people might be ascertained, were to reassemble at the same place and finish their work.

When the convention met[2] it was found that each party had sent its most prominent men. On the Republican side Wilson, McKean, Mifflin, and Timothy Pickering are some of the familiar names which greet us; among the Constitutionalists we find Findley, Smilie, Whitehill, and Albert Gallatin. For a while the old party jealousies held full sway. The Republicans spent some days in declaiming against the constitution of 1776, a procedure which tended only to "irritate the spirit of party and make things worse instead of better."[3] In this, however, Wilson took no part. As for the Constitutionalists, they seem to have felt themselves discredited in the eyes of the

[1] By a vote of 39 to 17. Ten of the minority, in accordance with a custom sanctioned by the constitution of 1776, entered their reasons of dissent upon the journal. The principal reasons were as follows: (1) The assembly had no power to issue such a call; (2) even if it had the power there were not sufficient grounds for a convention; the majority of the people of the State were averse to it, the assent having been extorted from not more than (about) one-seventh of the people, "and often under false pretenses;" (3) the call "infringes the solemn compact entered into by the people of this State with each other," and would "render government precarious and unstable, encourage faction, and subject the lives and liberties of the good people of this Commonwealth and all law and government to uncertainty." (Proceedings Relating to the Conventions of 1776 and 1790, etc., pp. 136, 137.)

[2] The journal of the convention, together with the minutes of the committee of the whole, may be found in the volume entitled, Proceedings Relating to the Calling of the Conventions of 1776 and 1790, etc. (Harrisburg, 1825).

[3] Findley; see his letter to Plummer of February 27, 1812 (Penna. Mag., V., pp. 440–450).

people by their late unbridled opposition to the Federal Constitution, and to have been anxious to reinstate themselves in public opinion by a fair revision of the State constitution. Findley, the most influential and candid of their leaders, accordingly approached Wilson on the subject.[1] Between them an agreement was soon reached as to the course to be pursued. The constitution of 1776 was to be "treated with a delicacy approaching to reverence." Findley was to make a preparatory speech, the object of which was to reconcile parties, and then Wilson was to follow with a series of resolutions embodying the changes which had been agreed upon.

The operation of the scheme was all that could be desired. In his opening speech Findley urged "that even though the present constitution might be good in theory, yet so many deviations had been made from it, so great a difference of opinion had always existed about it, and * * * the voluntary election of the present convention was such a testimony of want of confidence in it that it was vain to think of restoring its energy without essential alterations." In the divisions over the resolutions which were then introduced, as recorded in the minutes of the committee of the whole, all party barriers seem removed. By the 9th of December, the lines along which the constitution was to be altered were settled, and that with but few dissenting votes. The legislature, it was agreed, should consist of more than one branch; the executive power should be vested in a single person; judges of the supreme court should hold office during good behavior, and be independent as to their salaries; the executive should have a qualified negative upon the legislature; and the bill of rights was to be revised so that the rights of citizens might be more accurately defined and secured, and be made to conform to the rest of the system.[2]

The broad principles once settled, the rest, though involving the expenditure of much time and labor, was yet comparatively easy. Friction, of course, there was over various matters

[1] Of his own position as to the State constitution Findley says: "I had supported the constitution because it was inexpedient to make a change, yet that I never approved of its principles was well known to all my friends." (See his letter to Plummer, cited above. In this is found the account of the agreement narrated here.)

[2] See Minutes of the Grand Committee of the Whole (1790), pp. 8, 9. These may be found also in Proceedings Relating to the Conventions of 1776 and 1790 (1825).

of detail. A proposition to reestablish a property qualification for the franchise at one time threatened to make trouble, but it was withdrawn the next day. The clause embodying the comparatively novel doctrine that in prosecutions for libel the truth of the publication might be offered in defense was narrowly carried by Constitutionalists and moderate Republicans against the efforts of Lewis, McKean, and Pickering. By a like coalition propositions were defeated to fix the representation in the upper house on the basis of a ratio compounded [redacted]ealth and numbers, and to vest the choice of its members in a college of electors, as was the case in Maryland, and as had just been done in the Federal Constitution for the President of the United States.[1] Among the more aristocratic Republicans, who saw themselves thus defeated by their own party, the result was "no inconsiderable degree of ill humor." But on the whole the work proceeded harmoniously. On the lines above indicated the revision of the constitution was completed. As instructed by the call of the assembly, the convention then, on February 26, 1790, adjourned to enable the people to inspect their work. On August 9 it reassembled; three weeks were spent in making minor changes and perfecting detail, and then finally, on September 2, 1790, by a vote of 61 to 1, the constitution was formally ratified and proclaimed.

Thus ended the long contest which centered in and about the constitution of 1776. In the struggle our sympathies are in the main with the party which opposed that instrument. Its leaders unquestionably were superior in ability, in education, in the breadth of their views. The policies which they advocated were sounder and better digested than those of their opponents. Doubtless the help rendered the patriot cause would in the end have been as abundant and efficient—nay, probably more so—had Morris, Thomson, Mifflin, and McKean prevailed and the government been continued under the proprietary charter. On the Constitutionalist side there was certainly much ignorance, bigotry, and violence, and not a little self-seeking demagogism. It was surely a public misfortune that throughout so large a portion of the State news-

[1] Upon all three of these questions Wilson acted with the Constitutionalists, and endeavored to dissuade the ultra members of his party. Of his whole course in the convention, Graydon, who was himself a member and voted with Wilson, says he "was truly great, but enthusiastically democratic." (Graydon's Memoirs, p. 354.)

papers and educational facilities were so lacking as to permit of this condition of affairs. Nevertheless, conceding all this, it may be asserted that the Constitutionalist party of Pennsylvania had a mission, and fulfilled it. It was the entering wedge which was to force asunder the old aristocracy and let in the new democracy. It was a manifestation of the great movement for more equal political and social rights, of which the Revolution was both a cause and an effect. In a far truer sense than can be said of the Virginians, it formed the nucleus of the Jeffersonian Democracy, which ripened in time into the Democratic party of Andrew Jackson. The spirit and tendency of the ultra-aristocratic wing of the Republican party may be seen in its conduct in the convention of 1789–90, and may be inferred from the lien and sedition laws of rampant Federalism. The one party looked backward, the other forward. The progress which the Constitutionalists brought was costly. They were untrained to participation in public affairs, and naturally fell often into error; but the progress was permanent.

XXII.—EVOLUTION OF TOWNSHIP GOVERNMENT IN OHIO.

By James Alva Wilgus.

This paper is the result of investigations started on the subject of "town meetings" in Ohio; but this is only one phase of the subject of township government in Ohio, and is an intervening step between an earlier form and a later one; so in describing the evolution of township government in Ohio it will be necessary to go back to the very organization of government in the Northwest Territory. I wish to state in the beginning, however, that it is not my intention to trace the evolution clear through to the present, but only to deal with the earlier development, and to set forth in a simple manner the chief characteristics of our early township government, through the period of transformation, to the point where the main features of our system to-day take their rise. And it will be seen, I think, that "town meetings" in Ohio were essentially different from those in New England, where all the townsmen met together to make and execute local laws.

When the settlers who had journeyed down the Ohio in the *Mayflower* landed at what is to-day Marietta, the 7th day of April, 1788, they found it desirable to establish some sort of regulations to govern their dealings with one another. Accordingly on the next day they promulgated a code of laws by nailing them to the trunk of a large tree on the river bank. It must be observed that this was purely a voluntary agreement to meet the wants of the community, until the officers of the government of the Northwest Territory, provided for by the ordinance of 1787, should arrive and regularly institute government. "This code," it is said, "was rigidly observed till other laws were regularly enacted, and under it the peace of the settlement was never once disturbed."[1]

[1] Walker's History of Athens County, Ohio (1869), p. 86.

Governor St. Clair and party arrived in the course of three months, July 9, 1788, but St. Clair rested until the 15th, when he first publicly appeared before the assembled people, and delivering his inaugural address, began the government legally and regularly provided for. On the 26th of the same month,[1] he organized by proclamation the county of Washington, embracing nearly half of the present State of Ohio, which was the first agency for the administration of both general and local government. However, it must not be understood that local government, properly speaking, was established with the creation of Washington County. This did not occur till two years afterwards.

But before passing to this it may be well to inquire whether the people, even without any law on the subject, actually engaged in local government during this time. Probably they did not, and for two reasons. First, they did not feel that they had any authority to do so; and second, there was little or no necessity for it. An exception ought to be made to this, however, in the case of Marietta, for we have the record of a town meeting held there February 4, 1789, the first that ever convened in the Northwest Territory, to make some police regulations for the village. But that the people felt their lack of authority for holding such a meeting and establishing such regulations is clearly shown by their address to the governor and judges, who were away at the time, wherein they apologize upon the plea of urgent necessity for "establishing such city regulations as we are conscious should be derived alone from the sanction of your excellency's authority."[2] This, it will be noticed also, is connected with the regulations of a village community and not with those of a township, but it is interesting as showing the ideas the people had regarding their powers. Furthermore, as it is well known that the people of the Northwest Territory in its early existence had no share in the government, there being no officers to elect, it is more than probable, it seems, that the people did not find it necessary to, and hence did not, meet together to regulate their own affairs and transact business in the name of local gov-

[1] The proclamation was dated the 26th, but not issued till the next day. (II, St. Clair papers, pp. 78–79, note 1.) The proclamation is given in full. See also Walker's History of Athens County, Ohio, 1869, p. 93.

[2] (Anonymous.) History of Washington County (1881), p. 460. Published at Cleveland.

ernment for several years, not even until 1795, when they were first granted the privilege by law of electing one of their local officers, the assessor.

The ordinance establishing government in the Northwest Territory provided that the governor and judges (three in number) or a majority of them, should "adopt and publish * * * such laws of the original States * * * as may be necessary and best suited" to the Territory, subject, however, to the approval of Congress. Until the organization of a Territorial legislature it was the duty of the governor to appoint "such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same." It was also the duty of the governor to lay out the Territory into "counties and townships." When a legislature should be formed it was to define the powers and duties of officers, and also to make alterations in the civil divisions of the Territory when necessary.[1]

In accordance therefore with this fundamental law of the Territory, there was "passed" by Governor St. Clair and Judges Symmes and Turner, and published November 6, 1790, the first act establishing local government.[2] It will be noticed that the governor gave up his power of creating townships, and that the township and its officers were made dependent upon the county. This act directed "the justices of the court of general quarter sessions of the peace" in the several counties "to divide the counties into townships." The first townships so created were Marietta, Belpre, and Waterford, in Washington County, and all quite large.[3] The township officers provided for by this act were constables, overseers of the poor, and township clerk. They were to be appointed by the "justices of the court of quarter sessions of the peace" and were to hold office one year, except the township clerk, who was to hold "during good behavior." The duties of the constable were mostly ministerial; those of the overseers of the poor were principally to ascertain what persons needed relief and report to the "justices," so that "legal means" might be taken to afford it; and those of the township clerk were to

[1] Ordinance of July 13, 1787.

[2] I Chase's Statutes of Ohio (Territorial Laws, Ch. XVI), p. 107.

[3] (Anon.) History of Washington County (1881), p. 109. Published at Cleveland.

enter and register earmarks, brands, etc., for stock, and to look after strays. It will thus be seen that the functions of the township under this first act were inquisitorial, ministerial, and administrative.

The next act touching the township is that of the governor and judges, August 1, 1792,[1] wherein the "judges of the court of common pleas" in each county were to appoint annually, in addition to the officers above mentioned, "in each township, village, or district" three judicious men, "two of whom shall have power to assess and apportion * * * the sum or sums" directed by the county commissioners. Three years later, by act of June 19, 1795,[2] it was provided that the assessors should be chosen by electors in each township. This is the first instance of power being conferred upon the people to meet together and choose officers to manage their local affairs; and it is a significant fact that the first officer that the people had the privilege of electing was a financial officer, one intimately connected with their pocket and purse. It may be well therefore to describe the manner in which the election was conducted:

"The free male inhabitants of the several townships shall, on the third Tuesday in November, yearly and every year, assemble at some convenient and best inhabited part of every township, to be pointed out by the constable, and elect by ballot, viz, by writing on a piece of paper the name of one person, who he prefers to be assessor of the township for the year ensuing, and deliver the same to the three judges of the election, to be previously chosen, viva voce, by the said inhabitants so assembled; which ballot the said judges, or one of them, shall receive and keep safe in some box or close vessel, until all the ballots tendered to them, or any of them, that day, are received. And on examination of the ballots, the person having the greatest number of votes, being a freeholder of good fame, shall be considered, respected, and attended to as the assessor of such township for the year ensuing."

Certificates of election were to be issued and signed by the judges of election, and "by at least six more freeholders," and returns were to be made to the court.

In the system of township government as established by the preceding acts, the people had only a very little share in the management of their local affairs, and with the exception noted in the case of the assessor this period may be designated as that of appointed officers. It is known that dissatis-

[1] I Chase's Statutes of Ohio, p. 119.

[2] I Chase's Statutes of Ohio, p. 169. This act was adopted from the statutes of Pennsylvania, and was to take effect October 1, 1795.

faction existed with St. Clair and his administration of the government, and we are told that "efforts had been made by the Territorial legislature to change this mode of appointment to an election by the people, but the sturdy old governor applied his veto to all such innovations."[1] However, "in 1802 the Territorial legislature had so far prevailed over the old system" that the people were allowed to choose their own local officers, and there was established the system of "town meetings," so called, which, with some modifications, lasted till 1820. This act establishing "town meetings" was passed January 18, 1802.[2] It provided that the "free male inhabitants of each township, being 21 years or upward of age, and paying a county or Territorial tax," should convene on the first Monday of April yearly, at such place as should be designated at each preceding meeting, for the purpose of electing officers. When the electors had assembled to the number of fifteen or more, they were directed to choose a chairman, who should preserve order and cause every disorderly person to be removed, and if necessary, to be confined until the close of the meeting. This done, they were to choose the following officers: A township clerk; three or more trustees or managers; two or more overseers of the poor; three fence viewers; two appraisers of houses; one lister of taxable property; a sufficient number of supervisors of roads, and one or more constables.

Voting was to be by ballot, though questions of order might be determined by holding up of hands.

Should not enough electors assemble to choose officers, the trustees were to appoint another election to be held within four days, and to give notice through the constable. Notice of regular elections was to be given by the trustees at least fifteen days beforehand through the constable, who was to put up notifications at least ten days before in three of the most public places in the township.

Persons elected to office were required to serve on penalty of paying $5, with the exception, however, that they were not obliged to serve two years successively.

Vacancies "by reason of non-acceptances, death, or removal" were to be filled by the trustees.

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[1] Whittlesey's Early History of Cleveland, Ohio (1867), p. 360.

[2] I Chase's Statutes of Ohio, pp. 344–346. This act was to go into effect February 1, 1802.

The trustees, supervisor, overseers of the poor, and township clerk were to meet annually on the first Monday of March, at the place of holding township meetings, to settle the accounts of the supervisors of the highways and overseers of the poor.

This was a step in advance of the system of appointed officers as provided before, because the people now chose their own officers; and, fortunately, there is preserved for us the record of a town meeting, which will be interesting in this connection, in the old record book of the township of Cleveland, which then included the survey township of that name, Cuyahoga County east of the river, three townships of Geauga County, and, nominally, the whole reserve west of the Cuyahoga, although this was still possessed by the Indians. The record of the second meeting is as follows:[1]

"April the 4, one thousand eight hundred and three. The inhabitants of the township of Cleveland met at the house of James Kingsbury, esq., for a township meeting, and proceed and choose Amos Spafford, esq., chairman; Nathl. Doan, town clerk; Amos Spafford, esq., James Kingsbury, esq., and Timothy Doan, trustees; James Kingsbury, esq., and James Hamilton, overseers of the poor; Rudolphus Edwards and Ezekiel Walley and Amos Spafford, esq., fence viewers; Elijah Gunn and Samuel Huntington, esq., appraisers of houses; James Kingsbury, esq., lister; William Elivin, James Kingsbury, esq., and Timothy Doan, supervisors of highways; Rudolphus Edwards, constable."

At this meeting, it will be seen, no business except the election of officers was transacted. By law the only power conferred on the meeting was the election of officers and the power to designate the place of the next annual meeting. In case of non-election, the meeting did not provide for a new election; this was done by the trustees. The meeting did not levy taxes; it did not establish road districts; in fact, it did no governing. It is not improbable, though, that informal discussions took place on these matters, and that the officers acted accordingly; but I have found nothing to show that the meeting had any power to or that it actually did transact any business that was binding on the officers to execute, except in questions of order. The meeting, therefore, we may safely say, I think, was not after the New England fashion at all. The government of the township was in the hands of the officers

[1] The record is given in IV Magazine of Western History (Cleveland, 1886), p. 69. Whittlesey, in Early History of Cleveland, Ohio, gives the record of the first township meeting held under this law, on the 5th of April, 1802, at the house of James Kingsbury, Esq. (See p. 385.)

chosen at the meeting. This same law establishing "town meetings" once a year also established an officers' meeting in March to settle accounts, and in this we have the germ of our present system of township government by elected officers; and succeeding legislation, except as to taxation in the next act, shows the gradual concentration of power in the hands of the officers.

The next act on the subject is that of January 21, 1804.[1] It fixed a definite time of meeting—10 o'clock a. m. The number of officers was also made specific; there were to be three instead of "three or more" trustees; two instead of "two or more" overseers of the poor; two instead of "three" fence viewers; and of the two appraisers of houses one should be lister of taxable property. A treasurer and two judges of elections were also added, and the penalty for refusing to serve in office was reduced to $2. But the special significance of the act in this connection is the change which was made in the powers of the town meeting. The assembled electors were no longer to determine the place of meeting, for this was put in the hands of the trustees; and if no election should take place for want of fifteen or more electors assembling between 10 a. m. and 4 p. m., the trustees, instead of calling a new meeting, were empowered to appoint all the officers. But, on the other hand, the powers of the people were enlarged in the matter of taxation; for it was provided that a majority of the whole number of electors in the township should levy a tax for local purposes, under certain conditions and restrictions as to articles and amounts. The trustees, however, were to designate a constable to collect them.

The situation remained in this shape for six years, when, by act of February 19, 1810, the power to levy taxes was taken away from the "town meeting" and vested in the trustees, the conditions and restrictions as to articles and amounts being the same as before.[2] In other respects the law was substantially the same as in 1804, and no further changes were made till 1820.

[1] I Chase's Statutes of Ohio, pp. 397–400; also III Ohio Laws, pp. 368, 369. This act also conferred upon the county commissioners the power to change or alter the boundary lines of townships. The size of the township was also fixed at not less than 5 or 6 miles square, except in the Virginia military district, where they were to be not less than 7 miles square.

[2] I Chase's Statutes of Ohio, pp. 700–702.

Such, then, was the system of township government by the "town meeting" as established by law. The power of the town meeting was at all times limited, the only power of consequence being that of choosing officers, and, for a short time, that of levying taxes. When this latter was taken away in 1810 there was no business left for the town meeting except the election of officers. The matter of governing had all been transferred to the trustees; so in the next law on the subject (1820) we find no provision for the "town meeting" as formerly. And this brings us to another stage in the development of our township system marking the beginning of our present arrangement.

The act of January 24, 1820,[1] makes no provision whatever for choosing a chairman; the electors, upon assembling, being directed simply to choose judges of election in new townships or to proceed to the election of officers enumerated in old townships. In these latter the trustees were to act as judges of election, and the clerk of the township and another person appointed by the trustees were to act as clerks.

The warrant of the trustees to the constable directing him to notify the electors to assemble simply enumerated the officers to be chosen; but the trustees were directed to insert in the warrant, upon the application of two or more freeholders, "such other business, matter, or thing as may be proposed to be submitted" to the meeting. Such had been the warrant since 1804, and such the warrant was continued in 1820, and is still.[2]

We may conclude therefore, that although the law did not distinctly provide for town meetings after the former manner, yet an opportunity was left to the people for expressing their opinion on any such matter as might be proposed for their consideration, in accordance with the provision of the warrant. By law, to-day, some matters like the proposal for a township library or for a cemetery are to be submitted to a vote of the electors; and unless a special election should be required by law, in any case, such matters would be inserted in the warrant for the annual election, and the people would thus express their opinion upon them. It was not, and has not been, the practice of the electors of the township to hold deliberative

[1] II Chase's Statutes of Ohio, pp. 1087-1090.

[2] See I Chase's Statutes of Ohio, p. 399; also Acts of 1810 and 1820; also Revised Statutes of Ohio.

meetings, but simply to go to the polls on the day of election, at any time within the limits specified by law, and vote for their officers, in accordance with general election laws. It does not seem that the warrant for annual election contemplates any deliberative assembly at the annual election, but only the expression of opinion by ballot upon matters that may be under consideration. Meetings that are popularly called "township meetings" have been and are held sometimes, when questions of vital interest arise, such as the division of a township into election precincts. These meetings are deliberative, but they have no more authority in law than a party caucus or convention. They are not for purposes of government, and their work consists simply in drawing up petitions or remonstrances, which are submitted to the proper authorities in the questions involved.

Whatever may have been the governing power of the people under the system of "town meetings" from 1802 to 1820, we have seen that there was a gradual transference of that power from the people to the officers representing the people, and to-day township government is in the hands of the officers of the township elected by the people. They administer the general laws of the State that are applicable to the township, and manage all the local interests of the township in accordance with general laws.

As it is our purpose simply to trace the development of township government to its present form, and since the law of 1820 is in the main the basis of that form, it will not be necessary to go into the details of succeeding acts, but simply to describe in a general way the important features of our township government to-day, and note the substantial changes from 1820 by way of comparison. The officers are:[1] Three trustees, whose term of office is three years, one being elected each year; township clerk, who is clerk of the trustees, whose term of office is two years; treasurer, term also two years; assessors, term one year; road supervisors, term one year; and constables, term three years. The election is held annually on the first Monday in April.

[1] Revised Statutes of Ohio (1890), sec. 1448. Also 90 Ohio laws, pp. 144, 145, act of April 6, 1893. There is one assessor for the township, unless it is divided into election precincts, when an assessor is elected in each precinct. The electors of each road district choose one road supervisor for that district. The number of constables is designated by the trustees.

The functions of the township are the same to-day as in 1820. It is a corporate division of the county for the administration of local government, and is concerned with local improvements, the assessment and valuation of property for taxation, the election of public officers, the education of the youth, the care and support of the poor, the maintenance of public health, and the preservation of peace, good order, and public safety. And the principal changes to be noted by way of contrast are found in the officers and their duties, especially in the following particulars: The overseers of the poor and the fence viewers of 1820 have dropped out, while their duties have devolved upon the trustees. Also the appraisers of houses and the lister of taxable property have been combined and assimilated into the assessor of to-day. The justices of the peace and the school officers are purposely left out of consideration, for they are not distinctively township officers. For a number of years, however, the trustees of the township established the school districts within the township and had a general supervision of school matters; but since the school system has become thoroughly organized, school matters are placed in the hands of a board of education.

From the foregoing it is readily seen that the important period of evolution in our township government was in the first quarter of our present century, at a time when great changes were going on not only in the whole country but also and especially in the interior. During these years Ohio had her most rapid development and accession to population, for of the 88 counties in Ohio to-day, 70 were established by the close of the year 1820, and the population of the State had increased so rapidly as to bring her rank among her sister States from the eighteenth in 1800 to the fifth in 1820. Her people were happy and prosperous, and busy in clearing the virgin soil of its wealth of wood, with little time and less occasion for town meetings, so at this early date we find the essential features of our township government to-day. And in briefly recapitulating this paper, we may say that township government in Ohio has passed through three principal stages of development: First, government by appointed officers, till 1802; second, government by the people in "town meeting," so called, till 1820; and third, government by officers elected by the people, since 1820.

XXIII.—THE WESTERN POSTS AND THE BRITISH DEBTS.

By Prof. A. C. McLaughlin.

For some thirteen years after the Revolution England retained possession of a large part of our territory. Her reasons for this retention have never been clearly outlined. Her excuse was that we had broken the treaty on our part. This may serve as justification, but it does not supply us with her purposes in refusing to evacuate our territory, for she might have chosen a more ordinary method of retaliation for our breaches of faith. Moreover, retaliation is expected to come after the fact, while this occupation was at least simultaneous with violations of the treaty on our part, and was a continuous breach of the compact. It is worth while to investigate, therefore, with the hope of discovering what her aims and motives were, and to look a little more closely than historians have yet done into our relations with England on the subject of these frontier posts, which secured to her a control over our western country.

Moreover, it has been constantly charged by our writers that England, from the vantage ground of these western posts, instigated in a secret, dastardly manner the Indians of the region to wage their horrible, barbarous warfare upon our frontier settlements. There has been little disagreement on this point among our own writers. The prima facie evidence is so strong that presumptions of insidious instigation from England are easily and naturally made. The revelations of the Canadian archives allow us to go further than presumption and to settle the question with some definiteness. Like many other seemingly simple questions, this proves a somewhat complicated one when thorough investigation is granted it. The results of search do not enable me to agree either with the American historians who lay this charge at the door of Great Britain or with the more recent writers of Canada who endeavor to

clear the skirts of the home Government and the province of all unworthy motive or infamous action.[1]

November 30, 1782, a preliminary treaty of peace between Great Britain and the United States was agreed upon at Paris. By this treaty the boundaries of the latter country were practically determined. Not, however, till September 3, 1783, was the definitive treaty signed. This was not ratified by the Continental Congress till January 14, 1784, or by Great Britain till April 9 of that year. In this instrument His Britannic Majesty promises "with all convenient speed * * * to withdraw all his armies, garrisons, and fleets from the said United States and from every post, place, and harbor within the same." An armistice declaring a cessation of hostilities had been signed January 20, 1783. Under this General Carleton seems to have been ordered to vacate New York as early as April of that year.[2] His troops were not entirely withdrawn till November. This seems to have been regarded by our Government as a relinquishment of our territory "with all convenient speed." The western posts, however, were not delivered up until thirteen years after the definitive treaty.

Washington took measures at an early day to secure the frontier forts.[3] In July, 1783, he asked General Steuben to go to Canada and request the transfer of the posts. In case Gov-

[1] How writers have come to disagree on this matter—an international disagreement, so to speak—is illustrated by the two following quotations: "It is worth remembering that for five years, covertly or openly, England did her best to keep an Indian war, with all that it implied, alive upon our borders—the borders of a friendly nation with whom she was at peace." (Lodge's George Washington, Vol. II., p. 100. See, also, King's Ohio p. 256.) Goldwin Smith, on the contrary, says: "That the British Government or anybody by its authority was intriguing with the Indians against the Americans is an assertion of which there appears to be no proof." (The United States, p. 140.)

[2] Jefferson is my authority for this statement, but there is much corroborating evidence. (Wait's Am. State Papers, Vol. I, p. 280; ib., p. 345.)

[3] The posts claimed by Jefferson at a later day were "Michillimakinak, Detroit, Niagara, Oswego, Oswegatchie, Point au Fer, and Dutchmans Point." There were one or two others which were of some importance, though it is not clear that they were officially held and defended. According to a report sent to Grenville in 1790 there were posts of some kind at Presque Isle, the Sandusky and Miami rivers. But I can not think that they were more than trading posts, although troops may have been there occasionally. Of this I have been unable to get complete information. Hildreth includes Presque Isle and Sandusky among the posts that continued to be held by British garrisons. (History of the United States, Vol. III, p. 441.)

ernor Haldimand refused immediate possession Steuben was to obtain a promise that the United States would be informed as soon as possible of intended relinquishment. He was also directed to propose an exchange of artillery and stores. After his negotiations he was authorized to proceed westward as far as Detroit and to visit the various posts for purposes of investigation preliminary to the transfer.[1] Haldimand refused to consider the question of evacuation on the ground that he had received no orders relative to the matter. The ministry may at this time have had a different idea concerning the western posts from that held with regard to New York, inasmuch as at this time active preparations were being made to leave that city. But, as will be seen later, Haldimand did not desire to give up the posts, and seems to have inspired the British policy with reference to them.

March, 1784, Colonel Fish, of New York, was sent by Governor Clinton to ask that, when instructions were received, notice should be sent of the intended evacuation of the posts within the limits of that State. This, Haldimand says, he "easily evaded."[2] It was privately stated to the commissioner that, the treaty being with Congress, it would be inadmissible to grant the posts to a single State. Haldimand, it seems, also added that it would be improper to evacuate the posts so long as the loyalists were maltreated, in alleged violation of the definitive treaty.[3]

On behalf of the United States, General Knox, in June, 1784,[4] made formal demand for the detained posts. The letter was sent by Colonel Hull, who was also authorized to make final arrangements for the transfer. Hull executed his commission in July of that year. This demand also was without result.[5] The Government now made no further effort to obtain

[1] Correspondence in Wait's Am. St. Papers, Vol. I, p. 350; Kalb's Life of Steuben, p. 520; Cor. of the Rev., Vol. IV, pp. 41, 42.

[2] Can. Ar., B. 56, p. 214. Governor Clinton's letter to Haldimand introducing Fish was in March. Fish appeared in Quebec May 7.

[3] Can. Ar., B. 57, p. 615, and B. 56, p. 214. "But however restrained I might be in my public answer to Governor Clinton's letter, I could not hesitate to declare to Lieutenant-Colonel Fish that the posts should not be evacuated until such time as the American States should carry into execution the articles of the treaty in favor of the loyalists."

[4] Governor Chittenden, of Vermont, also sent a letter asking for posts on Lake Champlain in May, 1784. (Report Can. Ar., 1885, p. 367, B. 57, p. 615.)

[5] Michigan Pioneer Collection, vol. 20, pp. 332–338; Wait's Am. St. Papers, Vol. I, p. 351.

possession of these places, except by representation to the English ministry itself, and all such communication was rendered very difficult because of the superciliousness of England and her refusal for years to meet us on terms of equality.

When Haldimand refused to deliver the posts to Steuben, he wrote to Lord North his reasons for such action.[1] Not having received news of the definitive treaty, he did not feel justified in retiring from the position then occupied. Moreover, the Indians were extremely exasperated against the Americans, and it would be very unwise to allow Baron Steuben to pass through the Indian country. In addition to all other reasons, the longer the evacuation was delayed, the more time would be given the traders to remove their merchandise or to convert it into furs, and the greater time allowed the officers under his command to reconcile the Indians to a measure for which they entertained the greatest abhorrence.[2] Not till the spring of 1784, however, did Haldimand receive anything like instructions from the home Government. When these instructions reached him is not plain, but when he gave the answer to Fish he had not yet received them. On the other hand, when Hull was refused possession Haldimand was no longer acting on his own responsibility and initiative. He said to Hull that he had received no orders to evacuate. This was a negative pregnant. He had practically received orders not to evacuate. It seems as if he might have told Hull frankly why he did not wish to give up the posts, especially if they were held because of our miscomings. His correspondence discloses the situation to us. April 26[3] he is "anxious" to receive instructions. May 10 he writes Captain Robertson that he has as yet no "information respecting the fate of our posts."[4]

[1] (Can. Ar., B. 57, p. 558.) The correspondence clearly shows that Haldimand was very reluctant to give up the posts, that he was anxious to give all sorts of excuses and dilatory pleas to the Americans, and to prompt by sundry suggestions to the ministry the retention of these places at least for the time being.

[2] (Can. Ar., Hald. Papers, B. 57, p. 558, dated Quebec, August 20, 1783.) He adds: "I hope soon to have it in my power to inform the Indians more fully and more particularly of His Majesty's gracious instructions for their (the Indians') future welfare and safety, and I may by that means be enabled to render the most essential services to the United States of America by preventing the horrors and dangers of an Indian war."

[3] Haldimand to North, April 26, 1784. (Canadian Ar. B. 56, p. 208.)

[4] Dated Quebec, May 6, 1784. (Haldimand Papers, Mich. Pio. Col., Vol. XX, p. 226.) By June 14 at least he had received Sydney's letter of approval. (Can. Ar., B. 63, p. 407.)

Soon after this he should have received the letter of Sydney, dated April 8, 1784. This date is a striking one. The day this letter was written was the day previous to the ratification of the definitive treaty by Great Britain. It contained instructions to Haldimand to retain the posts, and full approval was accorded him for his previous conduct.[1]

A crucial portion of this letter is as follows:

With regard to your refusing a compliance with the desire of Major-General Baron de Steuben for delivering up to him the posts within the limits of the United States, you are certainly justified in every part of your proceedings, even if you had been in possession of the definitive treaty of peace. The seventh article stipulates that they should be evacuated with all convenient speed, but no time is fixed, and, as America has not, on her part, complied with even one article of the treaty, I think we may reconcile it in the present instance to delay the evacuation of these posts, at least until we are enabled to secure the traders in the interior country and withdraw their property.

He adds that while the Indians are so resentful the detention may be of actual service to America.[2] These last two reasons for refusal in Sydney's letter are the exact equivalent of the suggestions made by Haldimand to North the year before. Haldimand had in mind also the treatment of the loyalists as a reason for not evacuating. This is evidenced by his reply to Fish and his letter to North[3] of May 12, which

[1] Mathews wrote the orders of his excellency to Captain Robertson, August 12, 1784: "Having reason to expect that the posts in the upper country will not be given up as soon as expected until the Americans manifest a stronger inclination (than they have hitherto done) to fulfill on their part the articles of the definitive treaty." (Mich. Pio. Col., Vol. XX, p. 243. Can. Ar., B. 64, p. 141. Given in full Rep. Can. Archivist, 1888, Note E, p. 71.)

[2] Dated Whitehall, April 8, 1784 (Can. Ar., B. 50, p. 152). In August Sydney sent instructions to avoid discussion, but not to deliver until decisive orders were sent (Can. Ar., B. 50, p. 179). Haldimand left instructions of like nature in November, 1784 (Can. Ar., B. 221, p. 31).

[3] Letter of Haldimand to North, May 12, 1784 (Can. Ar., B. 56, p. 355). Haldimand had probably heard from Carleton of his difficulties at New York and had also heard complaints from the refugee loyalists. It is curious that Haldimand did not obtain earlier copies of the definitive treaty. A copy seems to have been sent him in December, 1783. Carleton and Washington had sent him notice of the peace in March of that year. May 10, 1784, he tells Governor Clinton that some accident happening to the packet had prevented his receiving the treaty. He acknowledges a copy in September, though he seems to have received one earlier. (Can. Ar., Q. 23, p. 355; Report 1890, p. 144; Report 1886, p. 27; Ar., B. 103, pp. 67-70; Report 1886, p. 30; Ar., B. 103, pp. 139-141; Wait's Am. St. Papers, Vol. I, p. 351.)

must have crossed the one from Sydney which contained the explicit instructions.

It is thus evident that, before Great Britain ratified the treaty, and as early as April, 1784, the ministry had resolved to detain the posts for an indefinite time. The ground of complaint then against America was that the treaty was not fulfilled in any particular. It may be surmised that the first excuse for a breach on the part of Great Britain was the persecution of the loyalists contrary to Article VI of the treaty.[1] However that may be, the alleged confiscation of estates and the impediments to the collection of debts soon occupied the attention of the ministry in their charges against us.

Had England been entirely ingenuous and frank, she would have openly protested, at least as early as the spring of 1784, against our breach of the treaty. But she did not deign to send us a minister or to make representations as to why she remained in possession of American territory. The United States was compelled to do all the wooing, and found the task far from a pleasant one. It is an old story of how proud, sensitive John Adams, with all meekness, allowed himself to be put off from month to month and to be courteously snubbed while he was endeavoring to receive an answer to the simple question as to why Great Britain continued to occupy the territory of the United States. The first intimation which our country officially received that the posts would be retained until Americans carried out the treaty, was as late as August 24, 1785, sixteen months after the ratification by England and the same length of time after the instructions of Sydney above referred to. This intimation was given Adams at the court of London. In a conversation with Mr. Pitt he was told that the delivery of the posts was connected with some other subjects that needed settlement, and reference was made to the impediments interposed by the American States to the

[1] Article VI reads: "That there shall be no further confiscation made, nor any prosecutions commenced against any person or persons for or by reason of the part which he or they may have taken in the present war, and that no person shall on that account suffer any future loss or damage, either in his person, liberty, or property; and that those who may be in confinement on such charges at the time of the ratification of the treaty in America shall be immediately set at liberty and the prosecutions so commenced discontinued."

recovery of sums due British creditors.[1] Pitt was not explicit. In October Adams wrote Jay that, having insisted upon the surrender of the posts, he could obtain no other answer than certain hints concerning the debts and some other points, which led him to believe that the restoration of the posts would have "conditions tacked to it."[2] On the 21st of this month, after much prodding and diligent inquiry, he succeeded, as he says, in getting something out of Lord Carmarthen. He told his lordship that, although Mr. Pitt was not explicit, he understood him to insinuate that the surrender of the posts would be made conditional upon something respecting the debts. Carmarthen then said that the posts would not be delivered until the debts were paid. "Paid! my lord!" ejaculated Adams, "that is more than ever was stipulated. No government ever undertook to pay the private debts of its subjects, and in this case nobody had such an idea."[3] In January, 1786, our minister is hopeful of getting a definite statement from the English Government. "I am glad," he writes, "to have an answer; for whatever condition they may tack to their surrender of the posts we shall find out what is boiling in their hearts and by degrees come together."[4] Not till the following month, however,[5] did Carmarthen give an orderly reply to Adams's inquiries.

Two years, therefore, had elapsed without a protest from England, without a formulation of complaints, without a frank statement of her purposes or her grievances. Only by persistence did our representative succeed in extracting an answer to his direct questions.[6] It is difficult, then, to believe that

[1] Dip. Cor., 1783–1789, Vol. II, p. 455. Article IV of the treaty reads as follows: "It is agreed that the creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money of all bona fide debts heretofore contracted."

[2] The Life and Works of John Adams, Vol. VIII, p. 320.

[3] Ib., p. 326.

[4] Ib., p. 368.

[5] February 28, 1786, Dip. Cor., 1783–89, Vol. II, p. 581.

[6] A personal private complaint on the part of a British creditor was made to Adams in June, 1785. Dip. Cor., 1783–1789, Vol. II, p. 371. Washington refers to the debts as excuse for retention of the posts as early as December 14, 1784. But it seems that he simply suggests the excuse as one which England might make. Writings of Washington, Vol. X, p. 426. The British consul, Temple, in New York, sent in some complaints to Jay in December, 1785. Secret Journals of Congress, Vol. 3, p. 599. Jay wrote to Adams to assure the ministry that our Government

England held our territory simply as a pledge or security for the fulfillment of the treaty on our part. She seemed, on the other hand, more than satisfied with her bargain, and could hardly be coaxed into a consideration of our claims.

The complaint that the States had violated Article IV of the treaty came late. The charge that we had persecuted and prosecuted the loyalists in contravention of Article VI might have been made as early as the winter of 1783–84, but that accusation was not seriously made until some years later. The debt formed the burden of the charges against us when England had finally been induced to tell what her complaints were. There were many reasons for this. The creditors formed themselves into a society to press their claims against the English Government.[1] The diplomacy of England in the last century was very largely dictated by her merchants. Their claims against the American debtors were continuous and less vague than many of the accusations of the persecuted loyalists.

Doubtless the Americans had broken the treaty. The treatment of the loyalists forms no bright chapter in our national history.[2] Several States had laws on the statute books which prevented the ready recovery of debts by British creditors. The war left the country in a condition of financial demoralization. It is not surprising that the foreign merchant, who seemed in some of the States to hold a permanent lien on property and to be a lasting drag on progress, should find statutes and stay laws blocking his path. In October, 1786, Jay made a report[3] to Congress which was a consideration of Lord Carmarthen's charges. He found that many of the charges were true. He wrote Adams in November, 1786: "The result of my inquiries into the conduct of the States relative to the treaty is that there has not been a single day since it took effect on which it has not been violated in America by one or other of the States."[4]

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was determined that the treaty should be observed by our citizens, and he also wrote to Temple telling him that his charges were vague and inexplicit.

[1] Adams's Works, Vol. VIII, p. 395.

[2] Jones, History of New York during the Revolutionary War, p. 260, is authority for the statement that Carleton sent from New York City between March and November, 1793, 100,000 persons who were "determined to leave the places of their nativity rather than put themselves in the power of persecuting, merciless, and unrelenting enemies."

[3] Secret Journals of Congress, Vol. IV, Foreign Affairs, p. 185, et seq.

[4] Correspondence and Public Papers of John Jay, Vol. III, p. 214.

Jay also asserted in this report that "deviation on our part preceded any on the part of Britain."[1] His argument is strange, and, I must confess, to me unaccountable. He asserts that England was not under obligations to evacuate our territory until after the ratification of the treaty of peace. The acts of some of the States which were in effect, however, between the signing of the treaty and the ratification, he considers the first violation of the treaty. To reach his conclusion it is also necessary to declare that the carrying away of the negroes contrary to stipulation was in November, when Jay left New York. Now, as a matter of fact, as Jefferson showed later, and as is evidenced by Washington's communication with Carleton in May of 1783, the British were carrying off negroes during the whole of that year.[2] Jefferson directly charged the first violation of the treaty upon England.[3] The question is, perhaps, a fruitless one. Both countries violated the treaty and practically simultaneously—America by the acts against the loyalists and against the recovery of debts, England by the retention of the posts and the transportation of negroes.[4]

After a full consideration of Lord Carmarthen's answer[5] to Adams's memorial, the Congress of the Confederation, at the suggestion of Jay, passed an act recommending to the States the repeal of any laws repugnant to the treaty of peace.[6] The States acted upon the recommendation. After the organization of the new Government under the Constitution, Jefferson was enabled to tell the British minister that "no such laws remained in any State of the Union except one, and even that one could not have forborne if any symptoms of compliance from the opposite party had rendered a reiterated requisition from Congress important."[7] One can hardly find fault with the response of Virginia to this request of Congress. The

[1] Secret Journals of Congress, Vol. IV, Foreign Affairs, p. 280.

[2] Ford's Writings of George Washington, Vol. X, p. 241; Wait's Am. St. Papers, Vol. I, p. 279.

[3] Ib., p. 282. Adams believed that England had violated first. Adams's Works, Vol. VIII, p. 327.

[4] Pitt early acknowledged to Adams that the deportation of the negroes was a plain violation of the treaty. Adams's Works, Vol. VIII, p. 303.

[5] Of February 28, 1786.

[6] Secret Journals of Congress, Vol. IV, p. 294, March 21, 1787.

[7] Wait's Am. St. Papers, Vol. I, p. 314. Jefferson seems to have meant South Carolina and not Virginia. See ib., p. 291, 292.

obnoxious acts were repealed, but the repealing act was suspended in its operation until England gave up the posts.[1] Virginia felt too keenly the dangers of Indian warfare on her very borders to be filled with all patience and humility.

When Washington had assumed the Presidency, but before a diplomatic service for the new Government could be entirely arranged, he asked Gouverneur Morris,[2] who was to be in London for other purposes, to ask the British ministry what objections remained to fulfilling the treaty; to discover whether they contemplated a treaty of commerce; to inform the ministry that their omitting to send a minister had not made an agreeable impression; and to inquire what their "future conduct" was to be in this particular. The result of Morris's interviews was the exchange of accredited ministers, but Pitt was little nearer a real desire for a complete settlement now than he had been five years earlier. Expressions of good will were not wanting, especially on the part of the Duke of Leeds, but England seemed not to regret her bargain. The representations of Morris were of such a character that refusal to evacuate could no longer rest securely upon the old ground. He informed the Duke of Leeds that all obstacles to the recovery of British debts were removed; that if any doubts could have remained they were all dissipated by the organization of the new Federal court, which would have full cognizance of all cases arising under the treaty.[3] From the formation of the new Government England was without valid excuse for retention on the old ground. At least her merchants were called upon to make use of the courts offered her, or all pretense at retaliation was assumption and unjustified intrusion upon our rights.

[1] Hening's Statutes of Va., Vol. XII, p. 528.

[2] Am. St. Papers, For. Rel., Vol. I, p. 122., Gales & Seaton ed.

[3] Ib. A like statement was made to Lord Dorchester's emissary in this country in 1790, and the ministry were so informed through this channel. The Canadian emissary was also called upon to notice that Jay, the very man that had made the report to Congress on the infractions of the treaty of peace, was at the head of the new court. "And is it possible to suppose that what he openly acknowledged in his political character will not affect his decisions on the bench?" etc. Report Canadian Archivist, 1890, p. 137, Note E (in full). See also ib., p. 165, Hamilton, known in cipher as "7," to Lieutenant-Colonel Beckwith. See also Jefferson's statement to the British minister in 1792, where it appears that no case had come before the Supreme Court of the United States and seemingly only one before the circuit. Am. St. Papers. For. Affairs, Vol. I, p. 211; G. & S. ed.

One other effort was made to settle this difficult matter by negotiation before Jay was sent on his special mission. As a result of Morris's interview ministers were exchanged by the two Governments, Mr. Hammond coming to Philadelphia. Soon after the arrival of the English minister, he and Jefferson entered into a long discussion on the subject of the treaty and its fulfillment. Hammond's charges were very sweeping. Jefferson's answer was masterly in its arrangement, logic, and completeness. Of course by this time the establishment of the new Government had removed many of the British grounds of complaint, but Hammond put the onus of breach of the treaty on the States. It was very difficult at that time to determine how far British creditors had been defrauded through legislative action or judicial connivance. It is a much more difficult task now; but he who reads Jefferson's argument and is attentive to the unmistakable evidence which he produced must acknowledge that, after all, the States had at last come to something like a reasonable consideration for the rights of foreign litigants. Beyond all question, the English Government greatly exaggerated our default.[1]

The American courts had often refused to give interest for the period of the war. This Jefferson fully justified. The judges seemed to hold, and it was certainly a common feeling, that this war had been an unusual one,[2] that England could not equitably claim interest on debts when her fleets and her

[1] See judgment of Trescot in his American Diplomatic History and of Lyman in his Diplomacy of the United States.

[2] Ib.; also Adams's Works, Vol. VIII, p. 304. Jefferson in this respect as in others made a most vigorous and able defense of the United States. "Your own laws," he says in the course of his argument, "forbade the payment of interest when it forbade the receipt of American produce into Great Britain and made that produce fair prize on the way from debtor to creditor." He also brings forth pretty good evidence to show that the omission of the word "interest" where debts were mentioned in the treaty was not a mere accident, but that it was in the minds of the English and American commissioners and of Congress also. "We see, too," he adds, "from the letter of Mr. Adams, June 16, 1786, No. 57, that the British secretary for foreign affairs was sensible that a British statute, having rendered all intercourse criminal between the debtor and creditor, had placed the article of interest on a different footing from the principal." Adams says: "Here his lordship fully agreed with me, and even outwent me in saying that it was very true that by construction of the law of this land it was high treason in a creditor in Great Britain to receive a remittance from his debtor in America during the war." Adams's Works, VIII, 402.

armies had been harrying our coast and devastating our land, without provocation and excuse in our eyes. Adams had claimed that the war was a total dissolution of all laws and government. Undoubtedly many of the English merchants much preferred to push their claims upon the Government rather than to go to the expense and uncertainty of litigation in America. Moreover, it is probable that every creditor that failed to recover sums due him was sure to find that there was lawful impediment contrary to the treaty, whereas the country during the critical period was filled with broken debtors and ruined tradesmen. It is noteworthy that Carmarthen had told Adams that the debts must be "paid" before England gave up the posts. This consummation was actually reached by the Jay treaty, through the agreement for a commission.

As to the interpretation of Article V of the definitive treaty, Jefferson and Hammond formed a direct issue. By this article Congress agreed to recommend to the States to provide for the restitution of the confiscated estates of the Tories. Congress had so recommended. Jefferson insisted that that constituted a fulfillment of the treaty. He was right verbally and actually. Recommendation was all that was promised by our commissioners at Paris. The English envoys had been given to understand that such recommendation was almost sure to prove fruitless.[1] Violation of Article V could by no ingenuity be set up as an excuse for the retention of our territory. With regard to Article VI, Jefferson's task was a difficult one. His defense does not seem to me ingenuous. That the States had by various acts violated Article VI of the treaty seems too plain to be denied. Such an act as that of 12th May, 1784,[2] passed by New York was a clear, wanton, and disgraceful breach of the treaty—a piece of shameful ex post facto legislation. Such action on the part of our States certainly went far toward excusing England for breach of the treaty and a disregard of our rights.

[1] Wait's Am. St. Papers, Vol. I, p. 326 et seq.

[2] Secret Jour. Cong., Vol. IV, p. 269. It is worth noting that both Jay and Jefferson, as well as many of the courts, held that State action in violation of the treaty even before 1789 was illegal and void and was not a lawful but an illegal impediment—less clearly by Jay than by Jefferson, curiously enough. Sec. Jour. Cong., Vol. XIV, pp. 203, 204. Wait's Am. St. Papers, Vol. IV, p. 292. Treaties under the Confederation were the supreme law of the land, and some, at least, of the State courts were ready so to hold with regard to the treaty of 1783.

By the time Jay went to England (1794) the ministry was ready, if not to be generous and open hearted, at least to consider our claims and to yield us our rights. The retention of the posts had become a very serious matter. England did not wish war. She had just entered upon the long struggle with France. Aggressive, not to say foolish, as her conduct had often been toward us, she was not ready to provoke us into alliance with France, if we showed a temper of conciliation and good will. Neither was she ready to give up the western posts, which gave her control over the Northwest and the Indians, unless there was good reason to think that we could be held apart from the fraternal embrace of French republicanism.[1] The conduct of both nations during 1793 and 1794 is not above reproach. Washington and Hamilton can be acquitted of the charge of folly; but the American rabble went mad, and even Jefferson did not act with supreme good sense. The English ministry had reasons for their suspicions. We were on the verge of war; but it would not have been so imminent had England not retained the posts and given every appearance of encouraging the Indians to hostilities, and had she not evinced new proof of her supercilious disregard of neutral and national rights by confiscating the cargoes of our merchantmen, by impressing our seamen, and by issuing her maddening orders in council. Her repressive, narrow commercial policy[2] was historic and not unnatural, but a generous, high-minded attitude toward America from 1793 on would have made friends of us and changed the history of the next twenty-five years. The result of Jay's negotiations was a treaty providing, among other things, for the evacuation of the frontier posts on or before June 1, 1796, and for a commission

[1] I think that an examination of the correspondence between the English ministry and the Canadian authorities in 1794 will show that England was readier to be considerate and amenable to reason and to come to decent terms with Jay than is generally supposed. This, perhaps, does not detract from Jay's diplomacy, but had he known the facts and the real anxiety of the ministry for peace, I am inclined to think that a bolder stand would have brought a more equitable treaty.

[2] America sharply felt the selfish policy of England after the Revolution, perhaps quite as much so as before. Jay gave an exceedingly good description of the folly of the restrictive system: "They expect much from the trade of America, and yet they take pains to cut off every source within their reach by which we make remittances. It is strange that they should wish us to buy, and yet be so industrious to put it out of our power to pay." (Dip. Cor., 1783–1789, Vol. II, p. 388.)

to determine the amount of the debt due British merchants, which was to be assumed by our Government, in case this collection had been hindered by any of the lawful impediments complained of.

Washington, very soon after the treaty of 1783, prophesied that England would retain the posts "as long as they could be held under any pretense whatever."[1] Jay's opinion is well presented in a report to Congress in March, 1786:

> Your secretary apprehends from the silence which Britain has hitherto observed respecting this subject that she is well content these infractions should remain uncorrected, that they may hereafter serve to justify such measures as she may wish to pursue under pretext of retaliation, either by continuing to detain from us our frontier posts, or by any other plans which resentment or policy may suggest.[2]

A consideration of the facts already given leads one to such a conclusion. England was not discontented with her bargain on the whole. Before the treaty was ratified she had determined, for a time at least, to retain possession of the western posts. The ministry had been prompted to this action by Haldimand on account of the situation of Canada. Had the circumstances in the west been the same as in the east, orders would have been received for evacuation when Carleton obtained his. Morris told Pitt very frankly, in 1790, what course England ought to have pursued, if she wished to retaliate against us for our breaches of faith. Her retention of our territory was a continuous violation of the treaty. What she was called upon to do was to surrender the posts, and then, if debts could not be recovered, issue letters of marque and reprisal to her aggrieved subjects.[3] It is plain that her conduct was, to say the least, unusual, and not calculated, under ordinary circumstances, to bring peace or the ultimate execution of the agreement. There seems, therefore, to be evidence on the very face of affairs to show that she did not hold our territory merely[4] as a pledge or as a retaliation for

[1] Writings of George Washington, Vol. X, p. 488; also p. 420.

[2] (Dip. Cor., 1783–1789, Vol. III, p. 101.) The report had reference to some statements made by the British consul-general at New York, who, not accredited as a minister, assumed to act as one in some particulars.

[3] Am. St. Papers, For. Affairs, Vol. I, p. 124, G. & S. ed.

[4] I have spoken of her "retention of our territory," for it is to be held in mind that not simply the posts but also the surrounding country were under England's sway. The desirable water ways and ordinary routes of communication were blocked for American travelers, because of a fear

our misconduct. There seems to have been some other reasons actuating her to choose this unusual method of recoupment. Some of these reasons can be seen in the letters already given passing between Haldimand and the British Government. We may now examine this question with more care. What did England gain by the retention of the posts?

She gained control of the fur trade.[1] The letters passing between Haldimand on the one hand and North[2] and Sydney[3] on the other show that this was in the minds of the Canadian authorities and the English ministry. The Americans felt specially aggrieved that they should lose the fur trade,[4] and the Canadians were indignant at a "lavish unnecessary concession, which induced the negotiators of the treaty with America to lay at her feet the most valuable branch of trade in this country."[5] Every effort was therefore made to keep the enterprising people from the States out of the Indian territory. These men had endeavored, almost before peace was declared, to make their way into the back country to secure valuable places of settlement whence they might control the trade.[6] In 1784 there was an unusually large traffic in furs, all of which redounded to the profit of the Canadians and seems to have made the Americans more anxious for the territory and the influence which yielded such good returns. The British, on the other hand, feared that the ambitious traders from the States, covetous of these privileges, would endeavor to occupy

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that the posts would be captured or the Americans gain access to the back country. It is interesting to notice that as late as June 3, 1796, travelers to the west complained of obstacles thrown in their way by the British at Oswego. The Journal of John Milton Holley, after recounting various hardships and other incidents of a trip at that time, includes this entry: "All these misfortunes happened in consequence of not having liberty to pass the fort at Oswego. Such are the effects of allowing the British Government to exist on the continent of America." (Whittlesey's Early History of Cleveland, p. 174.)

[1] Am. St. Papers, For. Affairs, Vol. I, p. 124, G. & S. ed.

[2] Can. Ar., B. 57, p. 558.

[3] Ib., B. 50, p. 152. Sydney said that the evacuation of the posts should be delayed "at least until we are enabled to secure the traders in the interior country and withdraw their property."

[4] Wait's Am. St. Papers, Vol. I, p. 281.

[5] Simcoe Papers, I, p. 73, quoted in Kingsford's History of Canada, Vol. VII, p. 345.

[6] Rep. Can. Ar., 1887, p. 242; Ar., B. 123, p. 369. Such at least appeared to be the desire of the traders pushing into the west in 1783.

the posts, and the commanders were advised to be on their guard.[1] This was a continuing fear. We find Dorchester writing to Grenville, as late as 1790, that the reason for America's raising troops was ostensibly to subdue the Indians, but apparently to attack the posts and secure the trade.[2] The Canadian traders endeavored to persuade the Government to consider their interest. They desired new posts established, and it is needless to say that they obtained consideration.[3] Morris told Pitt very frankly, in 1790, that England could have no other reason for the retention of the posts than a desire to secure the fur trade.[4] Montreal merchants in this year memorialized the Government, asking that if the posts should be given up the country should be declared neutral for five years in order to give them opportunity to withdraw their property.[5]

The fur trade was of considerable value. It was reported to Lieutenant-Governor Hamilton in 1785 to be worth £180,000, of which £100,000 was from within the limits of the United States.[6] In 1780 "the trade to the upper countries" was reported to be worth £200,000 sterling.[7] And yet probably the game was not worth the candle. The retention of the posts involved great expense, and, moreover, as Morris told Pitt, London would have remained the center of the fur trade whoever carried it on in America.[8]

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[1] Instructions of Haldimand, November, 1784 (Can. Ar., B. 221, p. 31; see also Rep. Can. Ar., 1890, p. 149, and Ar., Q. 24–1, p. 191).

[2] Rep. Can. Ar., 1890, p. 242; Ar., Q. 44–1, p. 121.

[3] Benjamin Frobisher, one of the influential traders, was zealous to obtain security for the trade, and he discloses the importance of the posts to this end: "If ever," he says, "this country sees the fatal moment of giving up the upper posts probably others may be established," etc. Rep. Can. Ar., 1888, p. 64 (given in full), Note E. Steps were taken to make arrangements for new posts early in 1784, but given up after the receipt of Sydney's letter of April 8. Mich. Pio. Col., vol. 20, p. 226; Rep. Can. Ar., 1888, pp. 65–71 (in full), Note E.

[4] Am. St. Papers, For. Rel., Vol. I, p. 124.

[5] Rep. Can. Ar., 1890, p. 281; Ar., Q. 50–1, p. 61.

[6] Same Rep., p. 56, Note C (given in full).

[7] Report to Governor Haldimand, given in full in report of Canadian Archivist for 1888, Note E, p. 59. One-fourth of all furs exported from Canada are here reported to come from Detroit and Niagara.

[8] Am. St. Papers, For. Rel., G. & S. ed., Vol. I, p. 124. Adams had said that if we succeeded in getting the fur trade we could furnish France with skins to the amount of 2,000,000 livres in exchange for her merchandise. It is doubtful, however, if the course of trade could have been drawn into that channel. Dip. Cor., 1783 to 1789, vol. 1, p. 694.

The Americans claimed, with some justice, that had the fur trade fallen naturally into their possession they could have paid their British debts. "The furs which would have been obtained," said Adams, "if the posts had been in our hands, would have come to England in payment of debts to the amount probably of several hundred thousand pounds."[1] This was one of the definite evils arising from the retention of the posts which Jefferson laid down in his communication to Hammond, May 29, 1792.[2]

A consideration of the fur trade leads to another conclusion. The legitimate traders, the men, it is to be presumed, who had influence with the Government, did not desire war between the Americans and the Indians. They were anxious for the retention of the posts, but actual war was injurious to their business interests. This fact is continually made evident. I do not mean to assert that the vagabond, irresponsible half-breeds and rovers were averse to war. There were, doubtless, many such fellows in the western country, half savage and quite as brutal as the red man. But it is unfair to charge the conduct of these men to the British Government or to the Canadian authorities. We do not wish to bear the odium for all the lawlessness and cruelty of the frontier Americans during this period.[3]

The proposition that the legitimate traders did not desire war almost proves itself. Evidence, however, can easily be produced to settle the question beyond peradventure. In January, 1791, Colonel Beckwith,[4] who had been sent for certain—or perhaps rather uncertain—diplomatic purposes from Canada to Philadelphia, held a conversation with Alexander Hamilton and Mr. William Macomb, of Detroit. Macomb was asked by Colonel Beckwith whether the traders had directly or indirectly induced the Indians to commence or continue hostilities. "Impossible," was the answer; "it would be the ruin of their trade, and the present Indian war will cause many bankrupt-

[1] Am. St. Papers, For. Rel., Y. & S. ed., vol. 2, p. 379.

[2] Wait's Am. St. Papers, Vol. I, p. 281.

[3] I do not mean to charge all our pioneers with lawlessness and cruelty. That would be the vilest slander. But there were Americans who, either provoked to madness by Indian outrages or because of their inherent love of war, were ruthless and revengeful. (See example—St. Clair Papers, Vol. II, p. 238.)

[4] As to who and what he was see Report of Can. Ar., 1890, pp. xl and xli.

cies in Detroit."[1] Lieutenant-Governor Simcoe wrote thus to Hammond, August 24, 1793: "I scarcely think it necessary to represent to your excellency that of the three branches into which the fur trade of this province is divided, the Detroit, Michillimackinac, and Northwest, that the former is totally ruined by the subsisting hostilities, etc."[2] A most interesting letter was written by Dundas to Lord Dorchester in 1791. One quotation from this letter must be given in this connection: "If the Indians are either extirpated from their countries or rendered insecure in the possession of them, our trade in that quarter, and which your lordship and the merchants of Montreal state to be so valuable, must be injured and the enjoyment of it rendered precarious." Dundas was desirous of peace. It is true he was also determined to retain the posts, but he evidently did not wish war to disturb the trade.[3]

Another reason for the retention of the posts, in addition to the preservation of the fur trade, is one lying not quite so plainly on the surface and yet is in part connected with the former one. The British Government desired to keep control and influence over the Indians, to the end that the trade might be secured, and that in case of war with America or Spain the tomahawk and the scalping knife might once more be called into requisition. There seems now to be something like slander in such a proposition, but the war of 1812 and the massacre at the River Raisin preclude our denying the possibility of such a purpose. It is noteworthy that when there was danger of war between England and Spain in 1790 a cargo of presents for the red men was hastily shipped from London to Quebec. The two ends to be subserved by the retention of the posts are well outlined in a secret dispatch sent by Dorches-

[1] Given in full, ib., p. 167, Note E. The whole interview is instructive. Macomb's testimony seems to me to bear the earmarks of truth.

[2] Can. Ar., Q. 279, pt. 2, p. 525.

[3] Given in full in Rep. Can. Arc., 1890, p. 173; Ar., Q. 52, p. 206. A letter written by the Northwest traders to Sir John Johnson, August 10, 1791, contains striking evidence. Johnson is asked "to represent to Dorchester the alarming situation of their trade south of Detroit; the chief part of it is carried on in the Miamis country, and last year the traders suffered loss by the burning of the Miamis village. * * * So long as the war between the Americans and Indians continues the trade must stop, as neither the lives nor property of the traders are safe, nor can the goods be exchanged for skins." I give the words of the Report of the Canadian Archivist for 1890, p. 302. They purport to be a condensation and not an exact transcript.

ter to Sydney in 1787: "Should it be determined to surrender these posts the States will immediately become masters of forts, strong enough against Indians, with a communication tolerably secure, which will greatly facilitate the reduction of that people and draw on us many reproaches. At the same time we shall lose great part of the fur trade and open a door for much smuggling."[1]

Fear of the Indians as well as a wish not to lose control over them actuated Haldimand to refuse the delivery of the posts and to write his somewhat urgent and suggestive letters to the home Government. Probably he was at first more strongly actuated by this anxiety than by any other motive, for there is evidence that he feared the worst consequences either to the Americans or to the English from a relinquishment of these important positions. The English would be charged with betraying their savage allies if the posts were abandoned; and, moreover, Haldimand was afraid to give such an indication of weakness. He wrote hastily to McLean at Niagara, April, 1783:

I shall, if possible, avoid promulgating them [the boundaries] in hope of receiving from England some consolatory instructions concerning the Six Nations and other Indian allies of whom I can not learn that there has been the least mention made in the provisional articles. This, it is soon probable, will reach their knowledge and the precautions suggested in my last will be the more necessary. I wait with the utmost anxiety for dispatches from England, etc. * * * I recommend in the meantime in the strongest terms your nicest attention to the management and conduct of the Indians.[2]

After reading this letter one needs no explanation of Haldimand's refusal to deliver the posts to Steuben or Hull. Nearly a year later[3] Haldimand wrote that, having not received instructions concerning evacuation, he would "not risk the consequences with the Indians of disbanding and reducing the troops" until he had received dispatches.

That there was some ground for apprehension is shown by the great disgust which prevailed among the braves when they did gain knowledge of the boundaries.[4] Doubtless influenced by these considerations, Haldimand did not wish to

[1] Can. Ar., Q. 27-1.

[2] Can. Ar., B. 104. p. 407.

[3] March 29, 1784. Can. Ar., B. 63, p. 154.

[4] See especially Rep. Can. Ar., 1886, p. 32; Ar., B. 103, p. 175.

speak of a delivery or a transfer[1] of the posts. He preferred to speak of evacuation, because he did not wish to have the red men think that their country had been turned over to the Americans. A mere withdrawal of the British troops would leave the question of occupation to be settled between the Americans and the Indians. How strongly he influenced the actions and the theories of the home Government is well shown by a letter to Lord North, November, 1783:

> To prevent such disastrous event as an Indian war is a consideration worthy of the attention of both nations, and can not be prevented so effectually as by allowing the posts in the upper country to remain as they are for some time. I already hinted to your lordship my wishes that my orders will be to withdraw the troops and stores from the posts within a certain time and to leave the Indians and Americans to make their own arrangements.[1]

At the close of the war neither the English Government nor its representatives on this side of the water had a well-determined and definite policy regarding the Indians. It was not long, however, before one had been formulated adapted to the needs and circumstances of the time. It may be said to have included the following main objects and propositions: The red men were to be assured of the friendship and sympathy of their former allies; presents were to be given them to keep them in good humor. It was desirable that they should be rendered secure in their lands in western New York and as far east and south as the Ohio River.[3] If they should be driven out by the Americans they would be welcome in Canada,[4] but it was much better to have them south of the boundary line.

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[1] "In all my transactions I never used the words either of my delivering or their receiving the posts." (Can. Ar., B. 56, p. 214.) That there should be danger to the Americans upon the withdrawal of the English is not strange. There might well have been a repetition of the conspiracy of Pontiac in some at least of its characteristics. It can not be claimed, however, that Haldimand desired the temporary retention of the posts in order to guard the Americans from this danger. Had that been his purpose, he would not have been unwilling to transfer the posts, and he would not have been anxious merely to withdraw when the time came; his aim would have been to put the Americans in charge of well equipped stations.

[2] Can. Ar., B. 57, p. 602. This is the earliest statement that I can find of the theory afterwards clung to, that the evacuation of the Indian territory was not a cession to the United States as against the red men.

[3] The English did not hold to these boundaries to the end. They were willing later that the Indians should establish a line farther to the west.

[4] Can. Ar., B. 50, p. 152. Also Matthews to Brant, April, 1784 (Rep. Can. Ar., 1886, p. 462; Ar., B. 64, p. 8).

There is more than one reference in the correspondence of the time to the desirability of what in modern diplomacy is known as a "buffer state" between the United States and Canada.[1] Much of the English action was prompted by a wish to have all the Northwest fairly in the hands of the savages as a neutral ground between the two nations, for the ministers knew that if the Indians were thus placed, by lavish presents and tender care their friendship could be retained and the traffic in furs kept in the hands of the Montreal merchant. Some of the authorities came to the belief that the treaty of Utrecht determined the position and status of the Indians, all later treaties to the contrary notwithstanding.[2] It is very difficult at times to determine how these men could have interpreted the treaty of 1783. Portland, for example, approves of Simcoe's statement that the treaty of Utrecht settles the matter, and declared that "the treaty of 1783, in describing the line between the two countries, is perfectly silent as to the privileges and claims of His Majesty, be they what they may, within the Indian country south of the treaty line."[3] Surely our commissioners at Paris worked for a bauble if that is all the line meant.[4]

If the Indians were to remain secure in their possession and continue the firm friends of England and her ready allies in case of war, they must be influenced not readily and weakly to yield to the American commissioners or to grant away their

[1] For example, Dundas to Dorchester, March, 1792 (Can. Ar., Q. 581–1, p. 59); also Dundas to Clark, "The great object is to interpose a barrier by means of the Indians, or, where thinly scattered, by the strength and situation of the country, so as to prevent encroachments on either side." I give the words of the report of 1891 (of the Canadian Archivist), purporting to be condensation of letter. Again, in a letter to Simcoe, "The Muskingum boundary, or any which will leave a sufficient interval between the provinces and the American States, is the object to be aimed at." (Ib., p. 31, tres; Ar., Q. 280–1, p. 16.) In 1794 Dorchester had risen to the pitch of believing that the rights of England south of the boundary line were the same as before the treaty. (Rep. Can. Ar., 1891, p. 77, bis; Ar., Q. 69–1, p. 185.) A neutral belt was desired even as late as the treaty of Ghent.

[2] Can. Ar., Q. 280–1, p. 201.

[3] Rep. Can. Ar., 1891, p. 35, tres; Ar., Q. 280–1, p. 231. The words quoted are those of the report.

[4] The English, I think, did not formulate that principle, if such one dare to call it, until late, but their acts were, with some exceptions, nearly in accord with the doctrine during a good portion of the period of retention of the posts.

possessions with a lavish hand.[1] That the Indians might present a more determined resistance to the blandishments of the persistent Yankees they must be kept united. Zeal for unification among the Indians was a continuing policy from 1783 to at least 1790.[2] England indulged in a little self-righteous glorification on this subject. Her real reasons were not so much the welfare of the Indians as a desire to have united allies and to keep the fur trade. As a part of this same policy the Canadian officers wished that interviews between the red men and the Americans should be held in places where the susceptible savage might feel the influence of English backing. On the whole, a sort of guardianship and tutelage over the Indians was supposed to remain in the English, and, while the United States violently resented any assumption of power or influence south of the boundary agreed upon, England was indignant that Americans should settle within the territory which her former companions in arms claimed as their own. The object of England was a selfish one, and it was quite unjustified if the treaty of 1783 had any meaning. The United States authorities charged it to Great Britain that no peace could be secured. They believed that back of the Indian chiefs were intriguing traders and emissaries who instigated the red men to agree to no reasonable terms. Part of these charges were without foundation in the way the Americans made them and believed them; but beyond doubt the English urged the Indians to remain united and advised them not to listen too readily to the tempting allurements of our peace commissioners. Moreover, the Indians were given to understand that they would be cared for.[3] Sydney officially announced that it

[1] Many references might be given. The following are examples: Rep. Can. Ar., 1886, p. 35; Ar., B. 103, pp. 243, 246; also same Rep., p. 40; Ar., B. 103, p. 355.

[2] Can. Ar., B. 104, p. 387; Q. 65, p. 282. June, 1793, Simcoe tells the United States commissioners that the policy of Great Britain ever since the conquest of Canada had been to unite the Indians to prevent petty jealousies. (Am. St. Papers, Ind. Aff., Vol. I, p. 347.)

[3] Can. Ar., Q. 26-1, p. 24; also Q. 28, p. 28; also Q. 27-1, p. 44. These references include explicit instructions from the home Government, e. g., Sydney to Dorchester, 1787. His Majesty's servants, considering that the protection of the fur trade and perhaps the general security of the province of Quebec may in some measure depend on the part "these people may take, would rather submit to an augmentation of such supplies than suffer them to be discontented or dissatisfied, particularly at this moment," etc.

was not consistent with justice to leave them to the mercy of the Americans.[1] Food and other necessaries were provided at British expense to the Indians engaged in treating with the United States.[2] Such bounties tended to prolong hostilities, for only when hungry is a brave amenable to reason.

Having seen the general attitude of the English toward the Indians, and some of their more general purposes, let us examine somewhat more at length the question as to whether or not border warfare was encouraged by the authorities. Our historians have continually made that accusation, and at first sight it seems to be justified. But I am glad to be able to state, after an examination of the Canadian archives[3] for the purpose, that England and her ministers can be absolutely acquitted of the charge that they desired to foment war in the west.[4] I do not mean to assert that they were entirely without responsibility for a condition of affairs and for a state of mind on the part of the savages which made hostilities a certainty. But direct instigation is not chargeable to English ministers at any time, nor to the Canadian authorities until 1794. There was never a time when the orders of the home Government to the colonial officials did not explicitly direct that war was to be deprecated and the Indians encouraged to keep the peace. Words seem at times inconsistent with acts; but the instructions are too frequent and too clear to be denied or misconstrued. A short survey of these instructions and other proofs will establish the truth of this assertion.

During 1783 Haldimand endeavored to dissuade the Indians from war. He affirmed, however, that he could not see them punished for their devotion to the royal cause, and that he should therefore help them against the incursions of the

[1] Can. Ar., Q. 26–1, p 73.

[2] For example, Mich. Pio. Col., Vol. 20, p. 313. It is not supposable that this was always, if at all, for the purpose of encouraging the Indians not to make peace if the treaty seemed a reasonable one in English eyes.

[3] I have occasionally, as will be seen, referred to Mr. Brymner's Reports, which contain condensation of the letters, etc.; but I have in no instance reached a conclusion without copies kindly furnished me by Mr. Brymner, or without cumulative evidence from the Reports. Where I have used the Reports alone I have tried always to indicate that fact.

[4] Roosevelt's The Winning of the West, Vol. III, gives in a paragraph, and without references, somewhat the same general conclusions as those here stated. Other books that I have examined reiterate the charges of a hundred years ago.

enemy.[1] In September of that year he wrote Sir John Johnson that the savages should be encouraged to be forbearant and peaceful, although he does not expect them to see their land destroyed by the Americans.[2] After the definitive treaty, although the posts were retained, instructions to preserve peace were often sent by the ministers to the Canadian officials.[3] The Indians were asked to act only on the defensive and to throw the responsibility for hostilities on the Americans.[4] The years from 1790 to the battle of Fallen Timbers are the crucial ones. But during this time I find the same tone and temper in the authoritative instructions as in those of previous years. Indeed, there seems to have been a desire for peace even among the western Canadians and Indian agents during the first portion of this period. The following piece of evidence is interesting and noteworthy. In November, 1790, Dorchester sent to Grenville the words of a certain number "7." These were probably obtained from the Colonel Beckwith already mentioned. "7" was Alexander Hamilton. He declared that there was no foundation for the idea that the Indians had British support, but that prudence would dictate the most pointed instructions to the officers at Detroit.[5] In September, 1791, Dundas wrote His Majesty's orders to Dorchester. They are explicit. His Majesty is concerned at the war and hopes that his officers have observed the strictest neutrality; were the war to continue England might be placed in an unpleasant situation. His Majesty therefore desires that every prudent measure be taken to effect a speedy termination

[1] Rep. Can. Ar., 1887, p. 562; Ar., B. 148, p. 133. "I have encouraged Brigadier McLean not only to refuse such aid in all offensive measures, but to employ every means to divert the Indians from undertaking it themselves, at the same time promising them every assistance and support in my power to oppose incursions of the enemy, etc." (Can. Ar., B. 58, p. 50.) Haldimand here speaks of the Northwest as undoubtedly the property of the Indians.

[2] Rep. Can. Ar., 1887, p. 155; see also Rep., 1886, pp. 33, 36, 128.

[3] Can. Ar., Q. 26–1, p. 73; Q. 27–1, p. 44.

[4] Can. Ar., Q. 26–2, p. 493; also Q. 26–1, p. 24. In September, 1790, Lord Dorchester finds fault with certain expressions in the reasons "to be given to the Indians for preserving peace among themselves." He therefore remonstrates with Sir John Johnson, directing that nothing should be said "that might appear unfriendly to the States." (Can. Ar., Q. 46–2, p. 526.)

[5] The communication purporting to give the interview with "7" is given in full in Rep. Can. Ar., 1890, p. 163, 164, Note E.

of the hostilities.[1] Even McKee, the western agent, who has been charged with being an arch mischief-maker,[2] was acting under direct instructions[3] and seems to have obeyed them. The desire for peace had continued through 1792 and 1793.[4] McKee, then at the rapids of the Miami, seems to have been making efforts to bring about a cessation of hostilities.[5] At least he so reported, and the wishes of his superiors are so evident and so strong that one must find greater evidence than I have been able to discover to convict him of disobedience and dishonesty.

During the latter part of 1793 and the early part of the next year somewhat different conditions prevailed. From the landing of Genet, in April of 1793, and the receipt of the news of the war between England and France, America was in a state of high excitement. There was the greatest danger of war. The excesses of the democratic societies and the extravagances of the mob awakened anew the distrust and watchfulness of England. That country seemed to forget that she had had her own French sympathizers, revolutionary societies, and "seditious writings," that there had been riots and uprisings, lampoons and caricatures, follies and foibles, quite as

[1] Given in full, Rep. Can. Ar., 1890, p. 173, Note E; Ar., Q. 52, p. 206. In March, 1791, Grenville wrote Dorchester in a similar strain. He speaks of desirability of adjustment of points of dispute between the United States and the Indians as affording "an opening for settling in some manner satisfactory to both parties the difficulties which have occurred to prevent the execution of that part of the treaty which relates to the cession of the posts." This was an indication that England was getting ready for the consummation reached in Jay's treaty. Grenville was from the beginning more reasonable and friendly than Sydney. (Can. Ar., Q. 50–1, p. 16; also Rep. Can. Ar.. 1890, where letters are given in full, pp. 168, 169, 172; also Mich. Pio. Col., vol. 20, pp. 311, 314, 320.)

[2] McKee is called the "chief mischief-maker" and "cause of the war" in a number of books. See, for example, Lossing's Field Book of the War of 1812, p. 45, note. Wayne called him in 1794 "the British Indian agent and principal stimulant of the war now existing, etc." The charge in 1794 at least had some foundation. (Am. St. Papers, Ind. Aff., Vol. I, p. 491.)

[3] Rep. Can. Ar., 1891, p. 15, tres.; Ar., Q. 279–1, p. 13.

[4] References are plentiful, e. g., Can. Ar., Q. 62, p. 70, and Simcoe to Hammond, Rep. Can. Ar., 1891, p. 55; Ar., Q. 66, p. 208, and Q. 279, pt. 2, p. 525.

[5] McKee assures Simcoe in 1793 that he had used no influence to prevent a treaty, but expects to be blamed, and that he had tried to persuade Indians to accept some boundary other than the Ohio. (Rep. Can. Ar., 1891, p. 55; Ar., Q. 66, p. 199.)

foolish, if not quite so widespread, as in America. It is easy even for us to overestimate the folly of our citizens at this critical juncture. The foolish madcaps made the most noise and hanged the greatest number of effigies, and history is therefore apt to be led into the same mistake as Lord Dorchester, who seems not to have appreciated our self-restraint, and to have jumped at the conclusion that war was sure to come. The wonderful thing is that our country restrained its passions through all this period, when every nation of the world was poisoned with the revolutionary virus. The close of 1793 saw America, on the whole, obedient to Washington's proclamation of neutrality. England had little to complain of, and the danger of war might have been considered past had not a new irritant been applied. This was found in the orders in council and other atrocious acts of interference with neutral rights which our country keenly felt. In the spring of 1794 there was a dreadful crisis. An embargo was declared; other measures looking toward retaliation were introduced into Congress, and only the calm judgment and self-control of Washington saved us from a war. With a last hope of bringing about a mutual understanding Jay was appointed as a special envoy to England.

When Jay had reached England and negotiations were begun, the ministry were anxious that the prospect for settlement should not be disturbed by the folly of the Canadian officials or of the Indian agents.[1] But before this Dorchester had made a false step and used words at which we took umbrage; and fortunate it was, in the sensitive condition of both countries, that war was not precipitated. He had just returned from England, and his words were thought not unnaturally to express the sentiments of the ministry. He told the Indians of lower Canada that English patience with America was "almost exhausted." "Since my return I find no appearance of a line remaining, and from the manner in which the people of the States push and act and talk on this side, and from what I learn of their conduct toward the sea, I shall not be surprised if we were at war with them in the course of the present

[1] Rep. Can. Ar., 1891, p. 68; Ar., Q. 67, p. 175. Letter dated July 5, 1794. Jay reached England June 8, but did not have a meeting with Lord Grenville till the 20th, and not until the 27th was there much discussion. Am. St. Papers, For. Rel., Vol. I, p. 476.

year, and if so, a line must be drawn by the warriors."[1] This speech, much to Dorchester's annoyance,[2] was noised about in the United States, and became a matter of diplomatic concern. It is to be noticed that Dorchester was reprimanded by the home Government. It is true the rebuke was only a mild one, but it would have been sharper had the effect of that speech been fully known; for there is good reason to think that, spite of these criminal words and the impudence of Hammond at Philadelphia, and spite of the fact that England wished to take advantage of her power upon the sea that she might push us to the last extremity consistent with her own gain, she did not wish actually to provoke us into war.

It is possible, then, to free the English Government entirely from the charge of endeavoring to foment war by direct instigation. It is necessary now to examine what was done by the Canadian authorities and the officials in the west, especially in the spring of 1794, and then to examine a little more closely the indirect instigation. I mean by indirect instigation, that conduct on the part of Great Britain which was not intended directly to incite the Indians to war, but which did have the effect of prolonging hostilities if not causing them.

There was an explicit encouragement of hostilities during Wayne's expedition into northern Ohio. Dorchester's speech was spread about among the western Indians and they were "mightily encouraged."[3] In April, Lieutenant-Colonel Butler read a speech of Dorchester's to a full council of the Six Nations at Buffalo Creek.[4] The Indians were much pleased with the contents of the speech, and returned thanks to their "father" for his attention to their interests. Butler addressed the braves on his own account as follows: "I have only a few

[1] These most important words were acknowledged by Hammond when interrogated by Randolph. Am. St. Papers, For. Rel., Vol. I, p. 462. Nothing but immense self-control could have enabled Washington and his advisers to give a soft answer to the reply of Hammond, which was impertinent and exasperating in the extreme. The speech will be found in Can. Ar., Q. 57, p. 109.

[2] Rep. Can. Ar., 1891, p. 65; Ar., Q. 67, p. 167.

[3] Mich. Pio. Col., vol. 20, pp. 345 and 351.

[4] This seems to have been the speech above referred to as spread about among the Indians. Evidently its tenor was the same as that of February before mentioned. Kingsford makes no mention of this speech of Butler's, and the various American authorities have not seen evidence of this widespread effort to prepare the Indians for what Dorchester thought the inevitable war. The speech is in Mich. Pio. Col., vol. 20, p. 343.

more words to say to you. You have heard the great talk of our going to war with the United States, and by the speech of your father just now delivered to you, you can not help seeing that there is a great prospect of it." He then encouraged them to act harmoniously together. At this critical juncture Simcoe built a fort at the Rapids of the Miami.[1] He had orders from Dorchester, but he was doubtless not reluctant, for he of all the high officials seems to have been most suspicious of the Americans and perhaps the most anxious to hold the Northwest for England.[2] It was claimed that this fort was built primarily to defend Detroit. It was said to be but an outpost of Detroit, and indeed but a reoccupation of a position held by the British during the latter part of the Revolution,[3] the evacuation of which had been bad policy. As a matter of fact, it was now occupied as a preparation for the war which Dorchester believed was at hand.

In the campaign of 1794 the sympathies of the Canadian authorities were strongly with the red men. Simcoe wrote Dundas that he hoped Wayne would be defeated.[4] He was very anxious that the Indians should be kept united and interested in the welfare of Great Britain.[5] It is evident also that

[1] In April, 1794. Am. St. Papers, Ind. Aff., Vol. I, p. 480.

[2] Goldwin Smith in his The United States says: "Simcoe, the governor of Upper Canada, having fallen under suspicion, though an excellent officer, was recalled." As a matter of fact, Simcoe was in Canada till after Jay's treaty, and Dorchester was responsible for the most overt acts. I find no reason for thinking him right in this assertion.

[3] McKee said England had held this position since 1781. (Can. Ar., Q. 70, p. 11.) He gave a long account to Simcoe in this letter, asserting, practically, that the British flag had been constantly in that neighborhood since 1763. He says: "The position of these posts has never been given up, and are considered part of the dependencies at Detroit." His argument is labored and simply shows that traders, and at times troops, had been there since 1783. Dorchester told Hammond that the fort had been reoccupied to preserve the trade and to prevent Detroit from being insidiously strangled.

[4] Can. Ar., Q. 280, 281, p. 178.

[5] This whole letter is a very important one. He says: "I have not been deceived in my conjecture of Brant. He has joined with all descriptions of persons in this country in *construing the occupation of the post at the Miami River and Lord Dorchester's speech to the Seven Nations into a certainty of Great Britain's being engaged in hostilities with the United States. He has acted with firmness and vigor.* The Cornplanter has also openly declared himself ready to obey any instructions he shall receive from me, his best friend." He wrote to Dundas that he expected to use "all land batteries, gunboats, and the shipping to prevent, if possible, Mr. Wayne from obtaining any supplies from Presque Isle or elsewhere by that channel," etc. (Ib.)

McKee, though not daring actually to engage in hostilities, was now somewhat gleefully expecting war. He writes that, due to Lord Dorchester's speech and intrigues of the Spaniards, Indian affairs are looking "better."[1] In spite of British sympathies, Wayne's expedition was successful. The Indians were routed. The battle was fought almost under the guns of the new fort on the Miami, and the braves were angered because the cannon were not used to defend them.

Did the Canadians directly participate in this war? Wayne asserted that they did. The evidence which he produced that white men took part in the attack upon him on the morning of June 30 is strong, if not absolutely convincing.[2] Many Canadians were engaged in the battle of Fallen Timbers on August 20. Of this there can be no doubt. Mr. Kingsford in his History of Canada[3] denies this fact on the ground that he has found the statement only in one place, viz, the Life and Letters of the late Hon. Richard Cartwright. Cartwright there says that some of the Detroit militia under Captain Caldwell very imprudently joined the Indians in this action. He gives the names of four of these men who were killed. This circumstantiality looks inconsistent with fabrication. Moreover, Wayne[4] gives conclusive evidence in his report of the battle. He says: "The woods were strewed for a considerable distance with the dead bodies of the Indians and their white auxiliaries, the latter armed with British muskets and bayonets."[5] He also includes in his report testimony of a native of Canada and a "volunteer in Captain Caldwell's company of refugees, friends, and allies of the hostile Indians captured in the action of 20th instant." This witness testified that about 70 of the militia, including Captain Caldwell's corps, were in the action. Another prisoner gave substantially the same testimony.[6]

Wayne's victory brought the treaty of Grenville. Jay's treaty, by providing for the transfer of the posts,[7] removed the great advantage for intrigue which the English had possessed

[1] Mich. Pio. Col., vol. 20, p. 351.

[2] Am. St. Papers, Ind. Aff., Vol. I, p. 488.

[3] Vol. VII, p. 414, note.

[4] Mr. Kingsford does not believe this story because he finds no such assertion made by Wayne or any United States writer. The author has evidently not examined Wayne's report with sufficient care.

[5] Am. St. Papers., Ind. Aff., Vol. I, p. 491.

[6] Ib., p. 495.

[7] June 1, 1796. The posts were transferred that summer at various times—not all sharply at date set.

and deprived the Canadian authorities of that temptation to interfere which had been the bane of our western history for so many years. Even after the victory of Wayne they hoped, however, that all was not lost. They strove to prevent the dispersal of the Indians into the south and west.[1] Joseph Chew wrote in despair from Montreal, "If the Indians remove to southern and western parts of the country the trade of Detroit, etc., is totally lost."[2] Ousted as the English were from these dangerous positions, they endeavored to cultivate Indian affection and friendship in order to secure the furs and to be sure of their valuable alliance. The general policy which prompted the retention of the posts was not abandoned until long after the war of 1812.[3]

In considering what may be called the indirect instigation by the British it is necessary to bear in mind the open sympathy which the English felt and expressed for the Indians, their attitude of guardianship, their retention of the posts, and, above all, continual showering of presents upon their former allies, even when engaged in open warfare against us. The interests of the traders were too evidently dependent on the good humor of the red men for the Government to neglect its ample largesses, although war was waging and the braves were largely dependent for subsistence on British generosity All instructions from the home Government to preserve the peace were coupled with injunctions to defend the posts, and often with orders to give lavish presents to the Indians and to be sure of obtaining their friendship and alliance.[4]

At the close of actual hostilities in 1782 and 1783 there was an effort to cut down Indian expenses, but throughout this period it was necessary to supply the western warriors with an unusual quantity of rum to keep them in good humor.[5] The beloved fire water was ever forthcoming to warm the red man's love for his English protector and ally. The commander of the post at Niagara doubtless told the truth when he said that one puncheon of rum would have more effect on the Indians than all the ability of Sir John Johnson.[6] One thing

[1] Mich. Pio. Col., vol. 20, p. 372. Simcoe seems even to have given orders for a new blockhouse on Swan Creek as late as October, 1794. (Ib., p. 148.)

[2] Ib., p. 145.

[3] McLaughlin's Lewis Cass, Chapter IV.

[4] E. g. Can. Ar., Q. 26-1 p. 73; Q. 27-1, p. 44; Q. 28, p. 28.

[5] Rep. Can. Ar., 1886, p. 31; Ar., B. 103, pp. 152, 155.

[6] Rep. Can. Ar., 1886, p. 34; Ar., B. 103, p. 216.

that prevented the cutting off of all presents was the fear that the Americans would endeavor to capture the posts. At such a time the Indian assistance would have to be depended on.[1] The surprise and seizure of the posts were constantly feared. Consequently, it would not do to leave the braves without munitions of war. Sydney wrote Dorchester, April, 1787: "To afford them active assistance would at the present moment be a measure extremely imprudent, but at the same time it would not become us to refuse them such supplies of ammunition as might enable them to defend themselves.[2]" Grenville's policy was more honorable and humane. He wrote in 1789 that requisition for arms to carry on war against Americans should be prevented.[3] Yet even in his administration much needed aid was given the warriors. In 1791 and at other times when it was equally important for us that the Indians should remain unaided, they were provided with provisions. The British claimed that no unusual aid was granted, and yet in all probability the effect of their largesses was the continuation of the war, for they did not give gew-gaws and beads and trinkets alone, but food, and rum, and arms, and ammunition, and blankets.[4] In this respect, as in others, the year 1794 marks a decided advance. The Indians against whom Wayne fought were greatly aided in equipment and partly fed at English expense. McKee seems to have been restless under instruction not to give more than usual.[5] But he was importunate in his demands for munitions of war. He writes to the provincial government for vermilion, guns, tobacco, and gunlocks.[6] And again:

If his excellency the commander in chief on your Application would be pleased to authorize the purchase of a few doz^{n} Gun Locks of the best kind, they would be of infinite service to the Indians at this time.[7]

[1] Can. Ar., Q. 27-1, p. 44; Ar., Q. 28, p. 28.

[2] Can. Ar., Q. 27-1, p. 44. The whole letter is a strong condemnation of Sydney's straightforwardness and humanity. See also his letter of September. Can. Ar., Q. 28, p. 28.

[3] Can. Ar., Q. 42, p. 144.

[4] St. Clair Papers, Vol. II, p. 194. Rep. Can. Ar., 1890, pp. 288, 295, 299, 300, 302. McKee certainly gave provisions, etc., in 1791, possibly not with any unusual generosity or with hostile intent. Dorchester certainly supposed not.

[5] Mich. Pio. Col., vol. 20, p. 364. Chew, however, speaks of additional supplies sent to Detroit. Ib., p. 361.

[6] Ib., pp. 360, 373.

[7] Ib., p. 356.

He wrote to Colonel England at Detroit, thanking him for his exertions to supply the Indians with provisions.[1]

The conclusions of this paper have, perhaps, been clearly presented in the course of the narration. It is agreeable to be able to state that the English Government did not encourage the Indians to war against a peaceful nation; but a candid examination of facts must compel one to acknowledge that England's conduct was neither ingenuous nor generous. She had reasons for retaining the posts other than those she gave to us. Her sympathy with the Indians and her guardianship of their interests were largely actuated by a desire to have their terrible and infernal assistance in time of war. Her officers during at least one critical period gave direct aid and encouragement to the warriors. Her care for what she held to be their interests and were palpably her own prolonged hostilities, even if it did not cause them. There was great truth in Brant's reproach, that if they had not been interfered with by England the Indians would have early made a safe and honorable peace with America.

[1] Farmer's History of Detroit and Michigan, p. 266. The letter is there given in full. He also complains to Simcoe: "The most material articles of the Indians' supplies are not yet come up, viz, blankets, guns, rifles, balls, flints, knives, tobacco, and paint, so that it is not in my power to make a distribution. The last two articles are so necessary that I made a requisition to Colonel England for the purchase of some, but he writes me that he does not consider himself authorized to approve of it, and I am now without any of these articles, which to an Indian are as necessary as food and constantly called for by them." (Can. Ar., Q. 70, p. 11.) He evidently did not obtain all he would have liked, but there is strong evidence that he obtained a good deal, especially in the letter to England above mentioned. He also complained that the guns which had been sent for the Indians were not good enough. He wants better ones and good gunlocks. Wayne's report contained a statement by a British drummer to the effect that the Indians had been furnished with food from the British stores. (Am. St. Papers, Ind. Aff., Vol. I, p. 495.)

XXIV.—THE EXISTING AUTOGRAPHS OF CHRISTOPHER COLUMBUS.

By WILLIAM ELEROY CURTIS.

It is probable that there are now in existence more important and interesting documents in the handwriting of Christopher Columbus than have been preserved of any other man of his time or comparative prominence. There are 29 complete letters and manuscripts, many of them several pages in length, written entirely with his hand and carrying his mysterious signature, not including voluminous marginal notes made by him on the pages of several books that he owned or read. Of these autographs 19 are letters—10 addressed to his son Diego; 4 to Father Gasper Corricio, a Carthusian monk who befriended him in his last days; 2 to Nicolo Oderigo, the ambassador from the Genoese Republic to Spain; 2 to Ferdinand and Isabella, and 1 to the governors of the Bank of St. George, Genoa.

There are also 6 memoranda written wholly in his hand but unsigned. Two are for the information and guidance of his son Diego, 2 relate to his claim against the crown of Spain, 1 refers to his arrest and imprisonment, and the other is a statement of the disposition of the gold which he brought from the Indies when he returned from his first voyage.

There are also in existence 3 drafts or orders for money in his handwriting and bearing his signature—2 of them addressed to Francisco de Morillo, in payment for naval supplies, and the other to Alonzo de Morales, treasurer, for money advanced to pay his traveling expenses to Granada and Seville.

There is also a copy of a letter he received from Dr. Toscanelli, a learned Florentine astronomer, some years before he started on his voyage, which confirms his theory of a western passage from Spain to the Indies. This is written upon the fly leaf of a book in his well-known hand, and is probably the oldest of his autographs in existence.

And, finally, there exists in Seville a volume of manuscripts written partly by Christopher Columbus, partly by his brother Bartholomew, and partly by two amanuenses.

All of these autographs except the Toscanelli letter were written during the last years of his life, and most of them while he was residing in the old monastery of Las Cuevas, on the outskirts of Seville, under the protection of the Carthusian friars. All of the manuscripts are so well preserved as to be easily photographed. His penmanship is firm, clear, and regular, and in places even ornamental, although, under date of December 1, 1504, he tells Diego, "My illness prevents me from writing except at night. In the day my hands have no strength." He was then about 60 years old.

The greatest number of the autographs are the property of the Duke of Veragua, the present head of the Columbus family, who has also the original commission under which the memorable voyage of discovery was made, a number of royal orders concerning the preparations for that voyage, and several autograph letters addressed to Columbus by Ferdinand and Isabella, the sovereigns of Spain.

At the request of the Congress of the United States, expressed in a formal resolution and conveyed to him through President Harrison, the Duke generously loaned the entire collection for exhibition in the Convent of La Rabida at the World's Columbian Exposition, and they furnished the most interesting historical exhibit there.

The letters and memoranda addressed to the sovereigns are in the archives of the Spanish Government. The other autographs belong to the Columbian Library at Seville, the municipal government at Genoa, and to the Duke of Berwick and Alba, who also loaned his collection for the exhibition at Chicago.

There are unsupported statements concerning letters and other autographs of Columbus in possession of English collectors from fifty to a hundred years ago, but if they ever existed they have disappeared and no traces can be found of them.

Both the Duke of Veragua and the Duke of Berwick-Alba have a full appreciation of the value of the papers and preserve them in handsomely carved oak chests.

One of the letters in the Duke of Veragua's collection which was exhibited at La Rabida is an original from the King of

Portugal. It is believed that Columbus left Lisbon after the death of his wife to escape his creditors. The popular understanding, however, based upon his own statements, is that his departure was due to indignation because the King secretly sent an expedition into the western seas to ascertain the truth of his theory. But there is a record of his application to Prince John II in 1488, two years later, for a passport to visit Lisbon to see his brother Bartholomew, who had just returned from an expedition to the Cape of Good Hope. This passport or safe conduct was necessary to protect him from arrest, and it will be seen from the text, written by the hand of the King himself with very good feeling, that Columbus feared both civil and criminal prosecution. This letter is as follows:

We, Don Juan, by the grace of God, King of Portugal and the Algarbes, of the sea this side and the other of Africa, and of Guinea, do hereby send you a hearty greeting:

We have read your letter which made us acquainted with the good will and attachment you show through the whole of it toward us and for our service, and we are very grateful to you for your feelings. In regard to your coming here we say, owing to what you indicate, and for other reasons, as well as for the desire of judging for ourselves of your industry and good talent, we shall thereby rejoice and be much pleased. And we say further, as far as we are concerned, all things will be fixed in such a way as to give you full satisfaction. In order to avoid trouble when you reach, whether by virtue of circumstances or otherwise, any port or place under our jurisdiction, we give you by these presents free admission to all the said ports and places, and permission to stay or leave, assuring you that you will not be molested in any way, or summoned, or sued, whether civilly or criminally for any cause whatever. And by means of this our royal letter we do command all our tribunals and authorities to do as herein directed. Whereupon we pray you to come promptly and have no fear or apprehension whatever.

The Genoa autographs are perhaps the most interesting of all the relics of Columbus that remain. Before starting upon his third and last voyage, in the spring of 1502, infirm in health and with impaired confidence in his sovereigns and the Council of the Indies, Columbus had copies of all his contracts, privileges, and commissions made and certified by the royal notary, and forwarded them to Nicolo de Oderigo, the Genoese ambassador to the Spanish court, to be deposited with and to be held in trust for the benefit of his heirs by the Bank of St. George at Genoa, which was then to the commercial world

what the Bank of England is to-day. He addressed the governors of that institution the following characteristic letter:

Although my body is here my heart is always with you. Our Lord has bestowed upon me the greatest favor that He has ever granted to anyone except David. The results of my undertaking are already being seen, and would shine considerably if the darkness of the Government did not conceal them. I shall go again to the Indies in the name of the Holy Trinity and shall soon return. But as I am mortal, I have ordered my son Don Diego to give you every year, forever, the tenth of all the revenues obtained in payment of the taxes on wheat, wine, and other provisions. If this tenth amounts to anything, please take it; if not, take my will for my deed. I ask you as a favor to attend to my said son Don Diego. Nicolo de Oderigo knows all about my letters of concession and privileges, and I have asked him to take good care of them. I wish you would see them. The King and Queen, my sovereigns, wish to honor me more now than ever. The Holy Trinity guard your noble persons in its keeping and increase the importance of your magnificent offices.

He signs himself "The Great Admiral of the Ocean Sea, and the Viceroy and Governor of the Islands and Mainland of Asia and the Indies belonging to the King and Queen, my sovereigns, The Captain-General of the Sea, and a member of their Council."

Upon his return to Spain in 1504, having heard nothing from the bank or from Oderigo about these documents, he writes an indignant letter, which he signs "The Great Admiral of the Ocean, Viceroy and Governor-General of the Indies, etc.":

At about the same time of my departure from here I sent to you by Francisco de Ribarol a book containing copies of several letters and another in which all the grants and privileges were also copied, the whole inclosed in a red morocco case with a silver lock. I also sent with the same man two letters to the St. George gentlemen, in which I assigned to them one-tenth of my revenues in consideration of and compensation for the reduction made on wheat and other supplies. To nothing of this have I had any reply. Micer Francisco says that everything arrived safely. If this is the case the failure of the St. George gentlemen to answer my letters is an act of discourtesy for which the treasury is by no means better off. This is the reason why it is generally said that to serve the common people is to serve no one.

Another book of my privileges similar to the one above mentioned was left by me at Cadiz with Francisco Catanio (who is the bearer of this letter), with instructions to send it to you, in order that you may keep it, together with the other, in some safe place, at your discretion.

The letters and documents sent by Columbus to the Bank of St. George were, however, duly entered upon the records of that institution, and the original entry may be seen in the handwriting of the chancellor on pages 256 and 257 of the man-

nal for 1502. After the bank went into liquidation the precious documents, which are now referred to as the "Codice Diplomatico," were transferred to the custody of the city authorities of Genoa, and are still preserved in what is called the "Custodia," a marble shaft surmounted by a bust of Columbus. There has recently been made, under the direction of the city government of Genoa, a beautiful facsimile of the entire collection of papers.

The duplicate book which Columbus refers to as "My privileges similar to the one above mentioned," which was left with Francisco Catanio, with instructions to send it to Nicolo Oderigo, in order that he might keep it with the first copy in some safe place, was taken by Napoleon I from the municipal palace in Genoa when he captured that city in 1808. It was carried to Paris and deposited in the office of the minister of foreign affairs, where it remains until this day. Mr. Benjamin Franklin Stevens, the well-known American bookseller of London, has recently reproduced this historical volume with wonderful accuracy and with copious and valuable historical notes.

In the Colombina Library, as it is called, at Seville, which formerly belonged to Fernando Columbus, are a number of books which were carried by Christopher Columbus on his various voyages, and which contain copious marginal notes in his handwriting. These books, in order of their ages, are:

First. A copy of the Historia Rerum Ubique Gestarum, by Enea Silvio Piccolomini, afterwards Pope Pius II. A small-volume folio printed at Colonia in the year 1477.

Second. The astromical and cosmographical treatise of Cardinal Pedro de Alliaco, entitled Imago Mundi, a gothic edition in folio, without date or imprint, but supposed to have been printed by Juan de Westphalia at Lovaina between the years 1480 and 1483.

Third. The works of Marco Polo. Latin edition of 1484.

Fourth. Historia Naturale de C. Plinio Secondo, Tradocta di lingua Latina in Fiorentina per Christophoro Landino, Fiorentino, al Serenissimo Ferdinando, Re di Napoli. Published at Venice September 11, 1489.

Fifth. Alamach Perpetuus Cuius Radix est Annum 1473, by Abraham Zacuth, astronomer to King Don Manuel of Portugal. Printed in Leiria in 1496. It was this very book that Columbus used to predict the eclipse of the moon which so

terrified the Indians in Jamaica that they became obedient to him and furnished his party food. On the margin are calculations in his penmanship which were doubtless made to verify those of Zacuth.

Sixth. Vidas de los Illustres Varones, by Plutarch, translated into Spanish by Alfonso de Palencia. Two large folio volumes, printed in Seville in 1491 by Paolo de Colonia. They contain frequent marginal notes.

Seventh. Concordantiæ Bibliæ Cardinalis S. P. A manuscript of the fifteenth century containing 112 parchment leaves.

It is evident that Columbus consulted this manuscript frequently while preparing his Libro de las Proficias, for on the margins are frequent cross-references in his handwriting, various lines are underscored, and indexed fingers point to passages which were considered by him of peculiar significance. It is claimed by some that this concordance was prepared by Columbus himself, but there is no evidence of the fact, and if so, the existing copy was made by an amanuensis. The four volumes last named have been discovered only recently among the books of Don Fernando Columbus by Dr. Simon de la Rosa y Lopez, the librarian of the Colombina Library, and are considered of the highest importance.

The Libro de las Proficias is a volume of manuscript containing 70 leaves of vellum, although there appear originally to have been 84. Fourteen seem to have been cut out of the center. It was prepared in the years 1504–5, and scarcely completed at the time of the death of Columbus, its object being to demonstrate that his discoveries were predicted by the Holy Scriptures. It is a collection of various papers and memoranda, often incoherent, including a collection of texts from both the Old and the New Testament that in his opinion refer to the existence of the lands he discovered and their future conversion to Christianity. There are many marginal notes, which would indicate that the manuscript is unfinished or at least that Columbus obtained additional material after completing it.

The first leaf begins with the usual pious invocation that precedes all of his manuscripts, and the sign of the cross. This is followed by a letter addressed by him from Granada to his friend, Father Garricio, at the convent of Las Cuevas on the 13th of September, 1501, concerning references by sacred and profane writers to the regions he had discovered, and also to the

probability of the recovery of the Holy Land from the infidels. The answer of the monk, dated at the monastery of Las Cuevas, 23d of March, 1502, is also inserted. Then follow various memoranda relating to the same subject, part of it in the handwriting of Columbus, but the greater portion being written by several different amanuenses. The penmanship of his brother, Bartholomew, and his son Fernando are identified in several different places.

The signature or rubric of Columbus, which appears at the end of all his communications, as the sign of the cross appears at the beginning, has never been satisfactorily interpreted. It was the custom of men of importance in his time to adopt manuals of a singular sort, as they adopted mottoes for their escutcheons, which had some apparent or concealed significance. The signs used by Columbus

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X. M. Y.
Xpo Ferens.

are generally interpreted to mean "Servus Suplex Altissimi Salvatoris Christus Maria Yosef," which in English reads, "The humble servant of Christ, the Supreme Saviour, Mary, and Joseph, Christ-bearer." Others render it in Spanish, "Servidor Sus Altezas, Secras Christo Maria, Ysabel," which means, "I am the servant of their three Highnesses, the Sacred Christ, Mary, and Isabella, Christ-bearer." The last line was often written, "Christo Ferens," and several signatures appear without it, and with "El Almirante" (the admiral) instead. These were written after his appointment as admiral in the Spanish navy. The most plausible rendering of the signs seems to be, "Salvo Sanctum Supulcrum Xriste Maria Yesus Xristo Ferens."

The following translations, made by Señor Dr. José Ignacio Rodriguez, Spanish secretary of the Bureau of the American Republics, at Washington, include all of the manuscripts of Columbus existing, arranged in the order of the dates at which they are supposed to have been written:

I.

LETTER FROM COLUMBUS TO FERDINAND AND ISABELLA CONCERNING THE COLONIZATION AND COMMERCE OF THE ISLAND OF HISPANIOLA.

[Written between July 5 and September 25, 1493, before starting on his second voyage. Original in archives of the Spanish Government.]

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MOST HIGH AND POWERFUL SIRS: In obedience to what Your Highnesses command me, I shall state what occurs to me for the peopling and settling of the Hispaniola Island and of all others, whether already discovered or hereafter to be discovered, submitting myself, however, to any better opinion.

In the first place, and in regard to the Hispaniola Island, I should suggest the number of settlers who may be found willing to go there to be up to two thousand, so as to render the possession of the country safer and cause it to be more profitable. This will aid also in facilitating intercourse and dealings with the neighboring islands.

I suggest further three or four towns to be founded at convenient places, and the new settlers or colonists to be properly distributed among said towns.

And in order to secure the better and prompter settlement of the said island, I should suggest furthermore that the privilege of getting gold be granted exclusively to those who have acquired a domicile and built a dwelling house in the town of their residence, so as to secure for them all to live close to each other and be better protected.

And, also, that each town be given, as is customary in Castile, a mayor and a clerk.

And furthermore, that a church be built, and that secular priests or friars be sent there for the administration of the sacraments, the conversion of the Jews, and the proper worship of the Divinity.

And further, that no colonist be allowed to go and gather gold unless with a permit from the governor or mayor of the town in which he lives, to be given only upon his promising under oath to return to the place of his residence and faithfully report all the gold which he may have gathered, this to be done once a month, or once a week, as may be ordered to him, the said report to be entered on the proper registry by

the clerk of the town in the presence of the mayor, and if so deemed advisable, in the presence of a friar or secular priest selected for the purpose.

And further, that all the gold so gathered be melted right away, and weighed and stamped subsequently with such a mark or seal as the town may have devised and selected, and that the share of that gold which belongs to Your Highnesses be given and delivered to the mayor of the town, the proper record thereof being made by the clerk and by the secular priest or friar who may witness to it, so as to cause the transaction to be known by more than one person and rendering the concealing of the truth impossible.

Furthermore, that all the gold which may be found without the mark or seal aforesaid in the possession of anyone who formerly had reported once as aforesaid, be forfeited and divided by halves, one for the informer and the other for Your Highnesses.

And further, that one per cent of all the gold gathered be set apart and appropriated for building churches, and providing for their proper furnishing and ornamentation, and to the support of the secular priests or friars having them in their charge, and if so deemed advisable for the payment of some compensation to the mayors and clerks of the respective towns, so as to cause them to fulfill their duties faithfully, and that the balance be delivered to the governor and treasurer sent there by Your Highnesses.

And further, and in regard to the division of the gold and the setting apart the share which belongs to Your Highnesses, I am of the opinion that the operation must be entrusted to the said governor and treasurer, because the amount of the gold found may sometimes be large and sometimes small, and, if so deemed advisable, that the share of Your Highnesses be established for one year to be one-half, the other half going to the gatherers, reserving for a future time to make some other and better provision, if necessary.

And further, that if the mayors and clerks commit any fraud in these matters, or consent to it, the proper punishment be inflicted upon them, and that a penalty be likewise imposed upon those colonists who do not report in full the whole amount of the gold which is in their possession.

And further, that a treasurer be appointed and sent to the said island, who shall receive all the gold belonging to Your

Highnesses, and shall have a clerk to make and keep the proper record of the receipts, and that the mayors and clerks of the respective towns be given the proper vouchers for everything which they may deliver to the said treasurer.

And further, that whereas the extreme anxiety of the colonists to gather gold may induce them to neglect all other business and occupations, it seems to me that prohibition should be made to them to engage in the search of gold during some season of the year, so as to give all other business, profitable to the island, an opportunity to be established and carried on.

And further, that as far as the business of discovering other lands is concerned, it is my opinion that permission to do so should be given to everyone who desires to embark in it, and that some liberality should be shown in reducing the fifth to be given away, so as to encourage as many as possible for entering into such undertakings.

And now I shall set forth my opinion as to the manner of sending vessels to the Hispaniola Island, and the regulation of this subject which must be made, which is as follows: That no vessels should be allowed to unload their cargoes except at one or two ports designated for that purpose, and that a record should be made of all that they carry and unload; and that no vessels should be allowed either to leave the island except from the same ports, after a record has been made also of all that they have taken on board, so that nothing can be concealed.

And further, and in regard to the gold to be brought from the island to Castile, that the whole of it, whether belonging to Your Highnesses or to some private individual, must be put in a safe, with two keys, one to be kept by the master of the vessel and the other by some person chosen by the governor and the treasurer, and that an official record must be made of everything put in the said safe, in order that each one may have what is his, and that whatever gold, much or little, found there in excess of what the record shows be forfeited to the benefit of Your Highnesses, so as to cause the transaction to be made faithfully.

And further, that all vessels coming from the said island must come to unload to the port of Cadiz, and that no person shall be allowed to leave the vessels or get in them until such person or persons of the said city as may be appointed for this purpose by Your Highnesses have boarded the same vessels

and received information from the masters of all that they have brought, and the official statement of the nature and value of the cargoes, so as to facilitate a thorough examination and find out whether anything has been brought hidden and not declared in the manifests at the time of shipment.

And further, that the said safe, where the gold belonging to all may be placed and brought to Cadiz, must be opened in the presence of the judicial authority of the said city and of an officer appointed for that purpose by Your Highnesses, and that thereupon each one must be given what belongs to him.

May Your Highnesses keep me in their minds, while I, on my part, shall ever pray to God our Lord to preserve the lives of Your Highnesses and enlarge their dominions.

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S. A. S.
X. M. Y.
XPO FERENS.

Sent by the admiral.

II.

LETTER FROM COLUMBUS TO FERDINAND AND ISABELLA CONCERNING SUPPLIES FOR AND THE GOVERNMENT OF THE INDIES.

[Without date, but probably written before second voyage. Original in the collection of the Duke of Veragua, Madrid.]

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Your Highnesses ordered a statement to be made of all the things required for provisioning the Indies, and, according to my opinion, what is needed is as follows:

First of all, six ships, which shall carry four or five hundred men, which, in my judgment, are necessary to conquer the Hispaniola Island. There are already in the said island four vessels, two of which belong to Your Highnesses, while the other two are owned by halves, one named *La Niña*, by Your Highnesses and myself, and the other named *La Vaquenos* by Your Highnesses and a widow residing at Palos. The two vessels which are therefore required to complete the total of six must be of one hundred and twenty tons burden each, so as to supply the deficiency of the other four, which are small. And to purchase said vessels will prove cheaper than to charter them; and the sailors must be engaged for certain fixed wages, and not otherwise, so as to secure better and cheaper service.

And for the fitting out and provisioning the vessels and providing for the support of the people on board things must be done in this way, namely: One-third of the provisions must be hard-tack, of good quality and well seasoned, and not old, because otherwise most of it will be lost. Another third must be salted flour, the salt to be mixed with the flour at the time it is milled. The other third must be wheat. But it is necessary to put also on board a provision of wine, and bacon, and sweet oil, and vinegar, and cheese, and pease, and lentils, and beans, and salted fish, and honey, and almonds and raisins, and also some fishing nets and hoops.

Pitch and oakum, and nails, and tallow, and iron, and hardware are things which are also required for the proper repair of the ships; and among the people on board the said ships there must be some who are calkers, and some who are carpenters, and coopers, and sawyers, and blacksmiths, and it will be cheaper to carry saws.

And it will be good for the ships sent there to carry sheep, and cows, and goats, especially if they are young; said animals to be got at the Canary Islands, because these islands are nearer and the price will be cheaper there than elsewhere.

And it will be advisable to put on board some linen goods and broadcloths for clothing purposes, and some shoes, and cotton, and needles, and bunting, and canvas, and caps, and saddles and harness for the horses, and also spurs.

And, furthermore, it is necessary for the ships going to the islands, as well as for the people residing there, to be provided with Lombardy guns for the ships themselves, and with lances and swords, and daggers, and crossbows and their appurtenances, and ammunition for the men.

And in reference to all those things which are required for the medical treatment of the sick, Father Fray Juan will give Your Highnesses full information.

If the things above mentioned are to be given by lots or rations, it will be necessary to entrust the distribution thereof to some person of good conscience, willing to give each one what is his, and incapable of depriving anyone of what belongs to him. And if it is decided that the said things will not be distributed by lots or rations, then it will be necessary to give the people some part of their wages in money, so as to enable them to purchase the said articles.

And then it will be likewise necessary to have there someone of good conscience who will do justice to all and give each one a fair treatment, because if those who are now in authority continue to exercise their power, the inhabitants, Christians as well as Indians, will leave the country, for the treatment received by the former as well as by the latter is more in conformity with the dictates of cruelty than with the principles of reason and justice. And as many of those who are there may be willing to domicile themselves in the island, it will be advisable for the one exercising authority in these matters to be provided with full powers to enter into arrangements or to allow engagements to be released as may be required.

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XPO FERENS.

III.

(Endorsement upon enclosure to No. IV): Memorial of the Admiral to Their Highnesses. He came to Valladolid in the year of ———.

IV.

LETTER FROM COLUMBUS TO FERDINAND AND ISABELLA, DATED GRANADA, FEBRUARY 6, 1502.

[Original in the archives of the Spanish Government.]

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MOST HIGH AND POWERFUL QUEEN AND KING, MY LADY AND MY LORD:

I wish I could give Your Highnesses pleasure and contentment, instead of burdening and annoying your minds. But as I know how great is the interest which Your Highnesses feel for all new things having some importance, I shall, in obedience to your command, set forth at this moment all that may come to my memory in regard to this subject, hoping that Your Highnesses will pardon the lack of ornament in my statements and look only to my good intention. I am bold enough to say that as far as the good service of Your Highnesses is concerned, I am not in need of learning from anyone what I myself know well how to do; and if on any occasion it should happen for me to lose my strength or be overcome by fatigue, the will to serve Your Highnesses as your most dutiful servant will not nevertheless leave me for an instant.

Sailors and other people who are conversant with the sea have always a better knowledge than all other of the parts of the world which they visit more frequently or with which they do business oftener. Everyone knows best what he sees every day, and what has happened lately is better known than what took place years ago. Hence it is that we hail with delight whatever is said to us by those who were eyewitnesses to the facts, and that no teaching proves to be for us more thorough and complete than that which comes to us through our own experience or observation.

Whether we admit that the shape of the world is spherical, as many writers affirm it to be, or bow to the decision of science if its conclusion is different, the fact of the diversity of climate within the same zone must remain undisturbed. That diversity will be observed on land as well as on the sea.

The sun exercises its influence on the earth, and the earth receives it in greater or lesser degree according to the character of its surface, whether mountainous or depressed. The ancients were well acquainted with this fact and wrote a good deal about it. Pliny went so far as to say that at the region of the north pole, exactly at the same zone, the temperature is so mild that the people who inhabit the spot never die, unless they themselves, getting tired of living, put an end to their existence.

Here in Spain this diversity of temperature in the same zone is so perceptible that no testimony of ancient writers or others is required to prove it. Here in Granada we see the mountains capped with snow, which is a sign of great cold, during the whole year, and at the foot of these very mountains there are alpujarras, where the temperature is delightful, neither too warm nor too cold. And what happens in this respect in this province happens also in many others of Spain, which it would be prolix to enumerate.

I say that on the sea the same things can be observed, especially in the proximity of the land; and this is known much better by those who frequent those waters than by the ones who travel elsewhere at a greater distance.

In Andalusia it is taken for granted during the summer that each day, as soon as the sun has reached a certain height, a mild and soft breeze from the west, which they call "virazon," will commence to blow and last until the evening. And what this "virazon" does for this region, other breezes of

analogous character do for other regions, sometimes in summer, sometimes in winter.

Those who frequently travel from Cadiz to Naples know well, according to the season, the kind of winds they will find when passing along the coast of Catalonia, or when entering the Gulf of Narbona. Travelers from Cadiz to Naples, if they make the trip during the winter, pass generally in sight of Cape Creo in Catalonia, and then through the Gulf of Narbona; they will find there strong winds which they will do well to obey. These winds will push them to Berneria; and it is for this reason that the navigators go as near as they can to Cape Creo, so as to have as fully as possible the benefit of these winds, and promptly reach the Pomegas of Marseilles, or the Eres Island. From here they continue, always in sight of land, to whatever place they desire. If the trip from Cadiz to Naples is to be made in summer, it is made along the coast of Berneria up to Sardinia, and from there it will continue in the same way as before described. The men who are engaged in this navigation, and have made many trips, are well acquainted with these routes, and know the kind of weather they will meet, according to the season. In common parlance we call these men "pilots," which means "leaders," or "guides." But a man who is a very good guide, and knows well how to go from here to Fuenterrabia, may be a bad guide and know nothing about the way to go from here to Lisbon. And the same thing happens on the sea, there being pilots who are excellent for the waters of Flanders, and others for those of the East, each one well fitted for the locality to which he is used.

There is a great intercourse between Spain and Flanders, and there are great sailors engaged in this navigation. In Flanders, in January, all the ships are ready to go back to their own countries, as it is very rare that a wind from the northeast, which they must avoid, does not make its appearance soon after. This wind, which in this season is cold, and blows wildly, is often dangerous. It is due to the distance of the sun and to the quality of the land at that place. Fortunately, it does not blow regularly, or permanently, and allows some opportunity to escape it. But the navigator who trusts himself to the sea under such winds does it at a great risk, and often owes his safety only to being able, through some change in the direction of the wind, to enter some French or English port, and wait there until the weather changes.

Sailors are people who are fond of making money and of returning home, and under the spur of these two feelings are apt to venture all and not wait for the good weather, unless reluctantly. I, myself, as I have said to Your Highnesses on another occasion, made once this voyage, being forced to keep my bed on account of sickness, and when the sun had already left Taurus and we were in the midst of a severe and dangerous winter. If the winds are favorable the distance is traveled quickly; but no one must start without being sure of the weather, and this assurance can be obtained by observing the sky and finding out that this is very clear and that the wind comes from the side of the northern star, and blows for some days always in the same direction.

Your Highnesses know well what happened in the year 1497, while Your Highnesses were at Burgos, and the people were kept in such a state of anxiety on account of the severe storms which raged then continually one after another. The weather was so annoying that Your Highnesses decided to leave Burgos and go to Loria. In pursuance of this plan the whole court moved for the latter city on the appointed day, which was a Saturday, it being the intention of Your Highnesses to follow on the next Monday. But that very night Your Highnesses received a letter of mine in which I said: "The wind began to blow on such and such a day; the fleet can not have set sail that day, but must have waited until the weather settles, which probably has been on Wednesday. If the fleet started then, it will reach the island of Huict on Thursday or Friday, and, if it does not stop there, it will enter Laredo next Monday, or all the sailors' calculations will prove to be false." This letter of mine, coupled with the desire of Your Highnesses to see the Princess sooner, caused Your Highnesses to abandon the idea of going to Loria, and put to test the opinion of the sailor. On Monday, indeed, only the vessels which had refused to stop at Huict because of the scarcity of her provisions entered the port of Laredo.

Many predictions of this kind can be made, and in fact have always been made both on land and on the sea. They certainly will be repeated now, among the many who will navigate between here and the newly discovered islands. The route is known, but if the instruments as well as the rigging and equipment of the vessels are improved, those who will engage in this business will know more than all others about those

lands, and the winds and the times which are more suitable for their purposes, and for the safety of their persons.

May the Holy Trinity preserve Your Highnesses, as I wish and we all need, with all your great states and dominions.

Granada, February 6, 1502.

S.
S. A. S.
X. M. Y.
XPO FERENS.

V.

LETTER FROM COLUMBUS TO NICOLO ODERIGO. DATED SEVILLE, MARCH 21, 1502.

[Original in the Municipal Palace, Genoa.]

†

SIR: The loneliness in which you have left us can not be described. I gave Francisco de Ribarol the book containing my deeds and other written documents, in order that he may send it to you with another copy of the letters. I ask you as a favor to inform Don Diego of your action on this matter. A duplicate of everything will be made and sent to you, in the same way and by the same Francisco. You will see that in these papers there is a new deed. Their Highnesses have promised me, as you will see, to give me all that belongs to me, and to give possession of all to Don Diego. I have written to Juan Luis and Mrs. Madona Catalina. My letter to them goes together with the present one. I am ready to sail, with the favor of the Holy Trinity, as soon as the weather permits it. I am well provided of everything. If Jeronimo Santiesteban is coming, he must wait for me, and not embarrass himself with anything. Otherwise, they will take from him all that they can and leave him thereafter in the cold. Let him come here, and the King and the Queen will receive him and attend to him until I come.

Our Lord may keep you in His holy guard.

Dated this 21st day of March, at Seville, 1502.

Command me.

S.
S. A. S.
X. M. Y.
XPO FERENS.

VI.

LETTER FROM CHRISTOPHER COLUMBUS TO THE MOST NOBLE LORDS OF THE BANK OF ST. GEORGE, GENOA. DATED SEVILLE, APRIL 2, 1502.

[Original in the Municipal Palace, Genoa.]

†

MOST NOBLE LORDS: Although my body is here my heart is always with you. Our Lord has bestowed on me the greatest favor that He has ever granted to anyone except David. The results of my undertaking are already being seen, and would shine considerably if the darkness of the Government did not conceal them. I shall go again to the Indies in the name of the Holy Trinity and shall soon return. But as I am mortal, I have ordered my son Don Diego to give you every year, forever, the tenth of all the revenue obtained in payment of the taxes on wheat, wine, and other provisions. If this tenth amounts to anything, please take it; if not, take my will for my deed. I ask you as a favor to attend to my said son Don Diego. Nicholo de Oderigo knows all about my letters of concessions and privileges, and I have asked him to take good care of them. I wish you would see them. The King and the Queen, my sovereigns, wish to honor me now more than ever. The Holy Trinity may guard your noble persons in its keeping and increase the importance of your magnificent office.

Dated at Seville this 2nd of April, 1502.

The Great Admiral of the Ocean Sea, and Viceroy and Governor of the Islands and Mainland of Asia and the Indies belonging to the King and Queen, my sovereigns, and their Captain-General of the Sea, and a member of their Council.

S.
S. A. S.
X. M. Y.
XPO FERENS.

VII.

LETTER FROM COLUMBUS TO FATHER D. GASPAR AT SAN LUCAR. DATED APRIL 4, 1502.

[Original in the collection of the Duke of Veragua, Madrid.]

†

REVEREND AND MOST PIOUS FATHER: If the anxiety to hear from you troubles me in the places where I am going as much as it does here, I shall feel very badly. The equipments sent to me have been in such a large quantity that I have been compelled to leave a part. Everything will be done afterwards more at leisure. The adelantado has already left with the ships to clean the bottoms thereof at Puebla Vieja. I shall sail in the name of the Holy Trinity Wednesday morning. Your reverence will see Don Diego on his return, and will instruct him well in regard to a memorial of mine which I have left with him, and of which I should like your reverence to have a copy. Some one will go there for my little trunk in order to see some deeds, and the letter sent by me for that purpose I shall write it myself. Don Diego will take it to you with my regards. I commend myself to the pious members of your religious house, especially to the Reverend Father Prior, whose always willing servant I am.

Dated April 4th.

All that your reverence may command will be done by

S.
S. A. S.
X. M. Y.
XPO FERENS.

VIII.

LETTER FROM COLUMBUS TO FATHER D. GASPAR AT SEVILLE. MAY, 1502.

[Original in the collection of the Duke of Veragua, Madrid.]

†

REVEREND AND MOST PIOUS FATHER: The wind from the east detained me in Cadiz (Calis) until the day in which the Moors besieged Arzila, and I took advantage of that wind to go to the assistance of the besieged, and I was the first to do so. Subsequently to that, our Lord gave me such a good weather that I arrived here in four days. Now I am going to

continue my voyage in the name of the Holy Trinity, and expect to succeed. I pray your reverence to remember to write often to Don Diego, and to remind Francisoc de Ribarol of the business of Rome. I do not write to him, because I have no time I commend myself to the father superior and to all the pious members of your religious house. We all here are well, thanks to our Lord.

Dated at Gran Canaria, on —— of May.

What your reverence may command will be done by—

S.
S. A. S.
X. M. Y.
XPO FERENS.

NOTE.—While day of the month is erased in the original the letter must have been written between the 20th and the 25th.

IX.

LETTER FROM COLUMBUS TO FATHER D. GASPAR. DATED JAMAICA, JULY 7, 1503.

[Original in the collection of the Duke of Veragua, Madrid.]

†

REVEREND AND MOST PIOUS FATHER: If my voyage would prove as conducive to my personal health and to the welfare of my house as is promised of aggrandizement for the royal crown of the King and Queen, my masters, I might hope to live more than one hundred years. I have no time to write now more at length. I expect that the bearer of the present letter will be some one of my house who will give you verbally more information than can be given in a thousand letters. Don Diego will also supply it. I ask as a favor to the father superior and to all the members of your religious house to remember me in their prayers.

Dated at the island of Jamaica (Janahica) on the 7th of July, 1503.

All that your reverence may command will be done.

S.
S. A. S.
X. M. Y.
XPO FERENS.

X.

LETTER FROM COLUMBUS TO FRANCISCO DE MORILLO. DATED SEPTEMBER 7, 1504.

[Original in the collection of the Duke of Berwick-Alba, Madrid.]

†

FRANCISCO DE MORILLO:

Give Diego Rodriguez, the master of the vessel, as he is called, as many gold dollars as are equivalent to sixteen thousand *maravedis*, in payment of forty hundred weight of hard-tack which he sold to me for the crew, at the rate of 400 *maravedis* the hundredweight. Give him, furthermore, eight ducats in payment of two "alunas," which I bought from him for the sails. Give also the said Diego Rodriguez eighty gold dollars which I must pay him for his fare and that of the twenty-five persons who will go with me from here to Castile. Give him all of this and make him receipt for it on the back of this lettter.

Dated to-day, Friday, the 7th of September, 1504.

XPO FERENS.

XI.

LETTER FROM COLUMBUS TO FRANCISCO DE MORILLO. DATED SEPTEMBER 8, 1504.

[Original in the collection of the Duke of Berwick-Alba, Madrid.]

†

FRANCISCO DE MORILLO:

Give Rodrigo Viscayno fifty-six *reales* in payment of eight "botas" (small wine skins) bought for the caravel at the rate of seven *reales* each. This makes three dollars and a half.

Give also Francisco Niño forty-two *reales* in payment of four "botas" and three "fexes de aras y bimbres." This makes in all ninety-eight *reales*.

Dated on board the ship of Diego Rodriguez, on the 8th of September, 1504.

Two dollars and a half and one *tomin*.

XPO FERENS.

XII.

LETTER FROM COLUMBUS TO FRANCISCO DE MORILLO. DATED SEPTEMBER 9, 1504.

[Original in the collection of the Duke of Berwick-Alba, Madrid.]

†

FRANCISCO DE MORILLO:

Give Diego de Salcedo fifteen gold dollars in payment of fifteen loads of bread which he took at the port in Brazil, when we were coming from Jamaica, to feed the people on board the ship of which he was the master.

Dated September 9th, 1504.

XPO FERENS.

XIII.

LETTER FROM COLUMBUS TO HIS SON DIEGO. DATED NOVEMBER 21, 1504.

[Original in the collection of the Duke of Veragua, Madrid.]

†

MY DEAREST SON: I received your letter which came by the post. You did well in remaining there and attending to remedy certain things and see already about your business. My lord the Bishop of Palencia has always favored me, and wished for my being honored ever since I came to Castile. Now is the time to request him to be pleased to look into the many wrongs which have been done to me and cause my agreement with Their Highnesses and the letters of concession which Their Highnesses granted to me to be ordered to be complied with, trying also to secure that a proper indemnification for so many injuries be paid to me. He must rest assured that if Their Highnesses do so their dominions and greatness will be increased in an incredible degree. He must not think forty thousand gold dollars to be too much, as a much greater sum might have been obtained if Satan had not interfered to prevent my plans from being carried out, because when I was brought from the Indies the labors in which I was already engaged promised to give an amount of gold superior beyond comparison to forty thousand dollars. I can state upon oath, and this I say to you alone, that the injury done to me in the matter of the concessions which Their Highnesses granted me amounts to ten millions per year, which never will be recovered. Now, imagine what will be the injury done to Their

Highnesses themselves for the share in said concessions which belongs to them. But they do not feel it. I write as one who is at their mercy and shall make an effort to leave for there. My safe arrival and all the rest is in the hands of our Lord. His mercy is infinite. Saint Augustine says that what is being done, or is about to be done, is a thing already done before the creation of the world. I also have written to those other gentlemen named in the letter of Diego Mendez. Commend me to their mercy and inform them of my intended voyage there, as I said before. Indeed I am afraid of being unable to reach my destination, and be left on the roadside, on account of the cold weather, which is inimical to such a great degree to this illness of mine.

I was very much pleased with your letter and with that the King, our lord, said, and for which I suppose you kissed his royal hands. It is true that I have served Their Highnesses with as much or greater diligence and love as I might have displayed in trying to gain the Paradise. If I failed to do something it was due only either upon the impossibility of the thing itself or upon its being entirely beyond my knowledge and my power. God, our Lord, requires in such cases only the will.

At the request of Treasurer Morales I made there two appointments in favor of two brothers named Porres. I made one of them a captain and the other an auditor. Neither of them had ability to fulfill his position, but I, in the desire to provide those places and through love to the person who recommended them, made the appointments. Both men soon turned vainer than they had ever been. I overlooked more acts of theirs than I had done for my relatives, and which were such as to deserve graver punishment than a simple verbal reprimand. They went to such an extreme as not to allow me, even if I had been willing, to change the decision which I reached. The record of the case will prove what I say. They revolted in the island of Jamaica, and I was as astonished by their actions as I had been by seeing the light of the sun being turned into darkness. I was then almost at the point of death, and they made me suffer cruelly, without any cause for it, for no less than five months. At last I made them all prisoners, but afterwards I set them all, except the captain, at liberty. I desired to bring the captain as a prisoner before Their Highnesses. A petition, made upon oath,

which was addressed to me and which I forward to you with this letter, will give you full information about this affair, although the record of the case will explain better the whole thing. That record and the clerk who attested it are coming in a vessel whose arrival I am expecting from day to day. The said prisoner was kept and retained in Santo Domingo by the governor. His punctiliousness compelled him to do so. There was a provision in my introduction by which all were commanded to obey my orders, and full jurisdiction was granted me in civil and criminal cases concerning all those who had come with me. But this provision was of no avail with the governor, because he said that it was not meant for his district and was not applicable to it. Afterwards he sent him here without record nor anything in writing to the lords who have charge of all the business of the Indies, but they did not receive him, and both brothers are free. I will not wonder if our Lord punished some one for this. They went there as unprincipled and shameless as ever. Such an act of rivalry and treason as this was never heard of before. I wrote to Their Highnesses about this matter, and I said to them that it was not right for them to consent to such a slight to me. I also wrote to the treasurer, and asked him as a favor not to pass his sentence upon words which they might say to him without giving me a hearing. Now, it will be good for you to remind him of my request. I do not know how they will dare to go before him with such a scheme. I have written to him again, and enclosed a copy of the sworn statement which I send to you, and also to Dr. Angulo and Licenciate Zapata. I commend myself to the mercy of them all, and give them notice that in a short time I shall leave for there.

I would be happy to see a letter of Their Highnesses and know through it what they command me to do. You must try, if you have an opportunity, to get such a letter for me. Present my compliment to the bishop, and also to Juan Lopez, and remind them of my illness and of the reward due for my services.

You must read the other letters which go with the present, so as to be able to act in conformity with what they say.

Tell Diego Mendez that I am obliged to him for his letter. I do not write to him, because he will know through you all that has passed, and because my illness precludes me from doing it. At this time it would be good for Carbajal and

Jeronimo to be in the court, and speak of our business with those lords and with the secretary.

Dated at Seville on the 21st of November.

Your father, who loves you more than himself.

S.
S. A. S.
X. M. Y.
XPO FERENS.

I wrote to Their Highnesses requesting them to cause the people who went with me to be paid. They are poor, and have been for three years away from their homes. The information which has reached them is more than extraordinary. They have run great many dangers and experienced great many difficulties. I did not want to plunder the country, in order not to give scandal. Reason advises that an effort be made to bring population to the country, and then all the gold desired will be got without scandal. Speak of this to the secretary, and to the bishop, and to Juan Lopez, and to whomever you may think to be advisable.

XIV.

LETTER FROM CHRISTOPHER COLUMBUS TO HIS SON DIEGO. DATED NOVEMBER 28, 1504.

[Original in the collection of the Duke of Veragua, Madrid.]

†

MY DEAREST SON: I received your letters of the 15th instant. I wrote to you eight days ago, and I sent the letter with a messenger. I enclosed in my letter some others addressed to other persons, which I did not seal, in order that you could read them and subsequently have them sealed and delivered. Although this illness of mine gives me much trouble, still I am getting ready to start on my voyage there. I am very anxious to have an answer from Their Highnesses, and I wish you would try to get it. I wish also Their Highnesses would provide for the payment of those poor people who have gone through such incredible ordeals, and have rendered them so great services, for which they must give infinite thanks to God our Lord, and greatly rejoice. If I——, the Paralipomenon, the Book of Kings, the Antiquities of Josephus, and other books will say what they know about it, I

expect, trusting in our Lord, to leave here next week, and for this reason it will be better for you not to write so often. I have not heard from Carvajal or Jerome. If they are there give them my regards. Times are such as to require both Carvajal to be in the court unless prevented by illness. Give my regards to Diego Mendez. I think that his true statements and his activity will outweigh the lies of the Porres. The bearer of this letter is Martin de Gamboa, who also carries a letter to Juan Lopez and a letter of credit. Read the letter to Lopez and then return it to the bearer. If you write to me send the letter to Luis de Soria, who will make them reach me wherever I may be. I believe that if I go I shall be carried on a stretcher, on account of my illness. May our Lord keep you in His holy guard. Your uncle has been very sick, and is still suffering a good deal with toothache and some trouble in the jaws.

Dated at Seville this 28th of November.

Your father, who loves you more than himself.

S.
S. A. S.
X. M. Y.
XPO FERENS.

XV.

LETTER FROM CHRISTOPHER COLUMBUS TO HIS SON DIEGO. DATED DECEMBER 1, 1504.

[Original in the collection of the Duke of Veragua, Madrid.]

†

MY DEAREST SON: Subsequent to your letter of the 15th of November I have heard nothing from you. I wish you would write to me very often. I should like to see a letter from you every hour. Reason must tell you that now I could not have a better relief. Many are the messengers who reach here every day, and the information they bring is such as to make my hair stand on end, seeing how things are going so much against my wishes. May the Holy Trinity be pleased to give health to the Queen, our lady, that she may settle and affirm what has been built. Last Thursday I wrote to you by a messenger, who, I suppose, is now on his way back to this place. I told you in that letter that my departure from here was a sure thing, but that my safe arrival there was, on

the contrary, and judging from experience, extremely uncertain. The ailment which afflicts me is so bad, and the cold weather aggravates it so much, that it was very possible for me to be left on the road in some of the inns. The stretchers and all other things were ready. But the weather became so formidable that nobody could think of travelling, and all said that it was better for a person so well known as I am to attend to my health and not to run such great risks. I told you also in that letter, as I now say again, that it was a good thing for you to stay where you are, specially at this time, and that it was advisable for us to begin to look into our affairs. Reason advises us to do so. It seems to me that a good copy must be made of that chapter of the letter which Their Highnesses wrote to me, in which they promise to fulfill their engagements with me and give possession of everything to you, and that said copy must be delivered to Their Highnesses, together with a statement in writing explaining my sickness and the impossibility in which I am now to go and kiss their royal hands and feet, and saying also that the Indies are going to ruin, and are as if they were on fire on every side; that I have received nothing of the revenue which I must get from there; that no person dares to make any demands in my favor, and that I am living on the money which I can borrow. The money which I got there was spent in bringing back to their homes the people who had gone with me, for it would have been a grave sin for me to leave them there unprotected. Information of this step must be given to the Bishop of Palencia, in whom I trust so much, and also to his chamberlain. I had thought that Carvajal and Jerome were still at your place. But our Lord is there, and He will fix everything as he knows to be the best for us.

Carvajal reached here yesterday. I wanted to send him back at once with this very instruction, but he asked to be excused on the ground that his wife is at the point of death. I shall see that he goes as soon as possible, because he knows much about this business. I shall endeavor also to send your brother and your uncle to kiss the hands of Their Highnesses, and make a report of the voyage, if the one made in my letters is not sufficient. Take good care of your brother. He has a very good disposition, and is no longer a boy. If you had ten brothers their number would not be too large. I never found better friends, under all circumstances, than my brothers.

We have to work first in fixing such matters as are relating to the government of the Indies, and subsequently in straightening out the business of our revenue. I gave you a memorandum in which I stated all that belongs to me. What they awarded Carvajal is nothing, and has returned into nothingness. Whoever wishes to take there any merchandise can take it, and therefore the eighth becomes nothing. I might send there any kind of merchandise and sell it without entering into accounts or association with any one, and not contributing the eighth. I clearly stated from the beginning that this grant of the eighth would end in nothing. It, however, belongs to me, the same as the third and the tenth, by virtue of the concession which Their Highnesses made in my favor. Out of the tenth I have got nothing, unless it is the tenth of what Their Highnesses themselves received. It must be, however, the tenth of all the gold and of everything found and obtained within the limits of my jurisdiction as Admiral, and of all the merchandise imported and exported into and from the said territory after deducting the expenses. I have already explained that the reason of all this is set forth with clearness in the book of my privileges.

An effort must be made to obtain from Their Highnesses an answer to my letter and an order directing these people to be paid. I wrote on this subject four days ago, and sent the letter by Martin de Gamboa. You must have seen the letter which I sent for Juan Lopez at the same time as yours.

It is rumored here that the idea is entertained to create three or four bishoprics in the Indies, and that this matter has been referred for study to the Bishop of Palencia. After presenting my compliments to that Bishop, tell him that the service of Their Hignesses will be promoted if he wishes to confer with me on this subject before taking final action.

Give my regards to Diego Mendez, and show to him this letter. My illness prevents me from writing, except at night. In daytime my hands have no strength.

I think that a son of Francisco Pinelo will carry this letter. If so, receive him well, because he does for me with love and good will all that he can.

The carabela whose mast was broken when leaving Santo Domingo has arrived in the Algarves. She brings the record of the investigation in the Porres matter. So many ugly things and such a display of cruelty as will be shown there

has never been seen. If Their Highnesses do not inflict the proper punishment, I do not know how any person will ever dare to go abroad and serve them, with people under his orders.

To day is Monday. I shall try to make your uncle and your brother leave here to-morrow. Remember that you must write very often to me, and tell Diego Mendez to write me a long letter. There are messengers who leave here every day for your place.

Our Lord may keep you in His holy guard.

Done at Seville, December 1, 1504.

Your father who loves you as much as himself.

THE ADMIRAL.

XVI.

LETTER FROM CHRISTOPHER COLUMBUS TO HIS SON DIEGO. DATED DECEMBER 3, 1504.

[Original in the collection of the Duke of Veragua, Madrid.]

MY DEAREST SON: I wrote to you a long letter the day before yesterday, and I sent it by Francisco Pinelo. Now, together with this letter, I send to you a very full memorandum. I am astonished at not receiving any letter from you or the others, and this astonishment is shared by all those who are acquainted with me. Every one here has letters, but I, although more entitled than all to expect them, receive none. This is a matter about which some more care ought to be taken. The memorandum to which I have referred explains itself, and for this reason I do not enter here into any details. Your brother, your uncle, and Carvajal are going to join you, and through them you will learn what is not said here.

May our Lord keep you in His holy guard.

Dated at Seville, this 3d of December, 1504.

Your father who loves you more than himself.

S.

S. A. S.

X. M. Y.

XPO FERENS.

XVII.

MEMORANDUM BY CHRISTOPHER COLUMBUS, INCLOSED TO HIS SON DIEGO IN LETTER DATED DECEMBER 3, 1504.

[Original in the collection of the Duke of Veragua, Madrid.]

Memorandum for you, my dearest son Don Diego, of what at present occurs to me must be done.

The principal thing is to commend to God, affectionately and with much devotion, the soul of the Queen, our lady. Her life was always catholic and holy. She was always ready for the things of God's holy service, and for this it must be believed that she is in His holy glory and beyond all desire relative to this rough and tiresome world.

Secondly, an effort should be made thoroughly and in all things to serve well the King, our lord, and prevent him from being displeased. His Highness is the head of all Christendom. Remember the proverb which says that when the head aches all the members ache also. Therefore, all good Christians must pray for the preservation of his health, and for his being granted a long life; and those who, like ourselves, are bound to serve him more especially than others, must join the said prayers and do the said service with great care and diligence.

Whereupon I have decided to write to you this memorandum, in spite of the great sufferings under which I am, in order that His Highness may be pleased to act as his own service requires; and to make your efforts more efficient I have decided also to send to your brother, who, although a child in days, is not a child in understanding, and also your uncle and Carvajal, so as to secure from you all together, if my written words are not sufficient, such verbal representations as may be conducive to His Highness's service.

In my opinion there is nothing more in need of attention and remedy than the Indies. His Highness must have there at present more than $40,000 or $50,000 in gold. I found out when I was there that the governor had no desire to send that gold. It is believed among the people that an additional sum of $150,000 must also be sent to His Highness. The mines continue to yield with steadiness and abundance. Most of the people there are extremely common and ignorant, who do not care much for anything. The governor is unpopular with all of them, and it is to be feared that they may some day do something wrong. If such a thing should happen, which God

forbid, the remedy for the situation would be difficult. Neither would it be an easy thing to find redress for any trouble which might arise out of any injustice done either here or there, owing to the great fame of the gold. My opinion is that His Highness must attend to this at once, and entrust this business to a person who feels interest on the subject, and goes there with 150 or 200 persons, well prepared and equipped. That person must stay there until all matters are settled, and that can be done in less than three months. Provision must be made also to raise there two other forces, because, on account of the few people who can custody the gold kept there, it may easily disappear. There is a proverb which says that the eye of the owner makes the horse fat. Here and there and everywhere I shall serve with pleasure Their Highnesses as long as my soul remains united to my body.

I said before that His Highness is the head of Christendom, and that it is necessary for him to provide for the preservation of these lands. Some people say that he can not in the way that things go provide the Indies with a good government and cause the same to yield the profits which reasonably must be expected. In my opinion his entrusting this matter to some one who feels interest in preventing illtreatment of the subject from being made would prove favorable to his service.

I wrote to His Highness as soon as I arrived here, and my letter, which was very long, stated fully all the evils which require prompt and efficient remedy. I have received no answer, nor have I heard of any provision having been made on the subject.

Some vessels are detained at San Lucar on account of the weather. I have told the gentlemen of this board of trade (Casa de Contratacion) that they must detain them until hearing either by messenger or by letter of some disposition of the matter made by the King, our lord. This is a very necessary thing, and I know what I say. Orders must be sent to all the ports directing the authorities to be diligent in preventing people to go to the Indies without a permit. I have already said that a great deal is kept there in houses badly built and straw roofed; that there are many ruffians among the people; that everybody dislikes the governor, and that no punishment has been or is inflicted upon those who do wrong and prove thereby to be benefited. If His Highness decides to do something it must be done quick, so as to cause no injury to the vessels.

I have heard that three bishops are to be chosen to be sent to Hispaniola. If it pleases His Highness to hear me before reaching a conclusion in this matter, I think that God, Our Lord, will be well served, and that His Highness will receive satisfaction.

P. S.—I have explained at length what must be provided for the Hispaniola.

XVIII.

LETTER FROM COLUMBUS TO HIS SON DIEGO. DATED DECEMBER 13, 1504.

[Original in the collection of the Duke of Veragua, Madrid.]

†

MY DEAREST SON: Eight days have been completed to-day since the departure from here of your uncle, your brother, and Carbajal, who went together to kiss the royal hands of His Highness and make a report of the voyage, and also to aid you in the negotiation of whatever may prove to be necessary.

Don Fernando left here with 150 ducats to be expended at his discretion. He will have to use some part of that money, but he will give you whatever he has. He also carries with him a letter of credit for some of your merchants there. You must be careful in this matter, because I have already had some trouble with your governor, because everybody had told me that I had there some eleven or twelve thousand castellanos, and the result was that I had only four thousand. He wanted to charge me many things which I was not bound to pay, and I, trusting on the promises made by Their Highnesses that restitution of everything should be ordered to be made to me, decided to allow him to go on with his charges. I was in hopes that some day I would call him to account for that. He is so overbearing that nobody who has money there dares to ask for it.

I am well aware of the fact that after I left he has received more than 5,000 castellanos; and if it were possible for you to obtain from His Highness a good letter to him, ordering him to deliver to whomever I may send with my power of attorney an account of what belongs to me and send the money, it would be very good for all—otherwise he will give nothing. Miguel Diaz and Velazquez dare not even mention the subject to him. Carbajal knows very well how this can be fixed. Show to him this letter. The 150 ducats which Luis Soria sent to you when I came have been paid as he wished.

I wrote to you a long letter, which I sent to you by Don Fernando. I also sent a memorandum. Now, after having given further thoughts to the subject, I shall say that, whereas Their Highnesses stated verbally and also under their signature, at the time of my departure, that they should give me everything to which I am entitled under my letters of privilege, it is proper not to make any claim, either for the third, or the tenth, and the eighth, mentioned in the memorandum, and to abide by the chapter of the letter in which Their Highnesses told me what I have explained, and make the claim for all that belongs to me under my letters of privilege. You have the book in which all these grants have been copied, and you will find there the explanation of the reason why I had to have the third and the tenth and the eighth. There will be always time to make reductions in the sum to be paid. But His Highness says in his letter that he wishes to give me all that belongs to me. Carbajal will understand all I mean as soon as he reads this letter. Everyone else will also understand it, as the letter is plain enough.

I have also written to His Highness and reminded him both of the necessity to take some measure in regard to the Indies to insure against some trouble among those people, and of the promises he made to me as above stated. It would be good for you to see this letter.

I sent to you now another letter of credit for those merchants. I have explained the reasons why the expenses must be moderate. Pay to your uncle that respect which is due to him, and treat your brother as an elder brother must treat the younger. You have no other brother, and the Lord must be blessed for having made him such a good one. He has proved and continues to prove to be a person of very clear head. Honor Carbajal and Diego Mendez. Give my regards to them all, and tell them that I have not written to them because there is nothing to write, and the messenger, furthermore, is hurrying me up.

The rumor goes around in this place that the Queen, whom God has in his glory, left the order that I should be restored to the possession of the Indies.

As soon as the clerk of the fleet arrives here, I shall send to you the record of the investigation made and the original writing of the Porres.

I have not heard from either your uncle or your brother since they left here. The rains have been so heavy that the river overflowed and entered the city.

If Agostin Italian and Francisco de Grimaldo are not willing to give you the money you may need, you must look for some others who may be willing to supply it. They must be sure that as soon as they send here your receipt I shall honor your signature and pay at once all that was given to you. At present there is no person here with whom I might send the money to you.

Dated to-day, Friday, the 13th of December, 1504.

Your father, who loves you more than himself.

S.
S. A. S.
X. M. Y.
XPO FERENS.

XIX.

LETTER FROM COLUMBUS TO HIS SON DIEGO. DATED DECEMBER 21, 1504.

[Original in the collection of the Duke of Veragua, Madrid.]

MY DEAREST SON: The adelantado and Carbajal and your brother left here for your place sixteen days ago, and I have not heard yet anything from them. Don Fernando took with him 150 ducats to attend to necessary expenses. He carried also a letter to the merchants ordering them to provide you with money. By Zamora, the postman, I sent you afterwards another of the same character, endorsed by Francisco de Rivarol, in which I told you not to use it if you had made use of the former one. Now, as I wish you not to lack money, I send you by Francisco Doria, but with the same injunction, a third letter of credit. I have already explained how necessary it is for us to be cautious in expending money until our affairs are settled by Their Highnesses. I also told you that in bringing these people to Castile I expended 1,200 castellanos, most of which His Highness owes me. I wrote to His Highness on the subject and asked for an order to settle that account.

I should like to have letters from you, if possible, every day. I complain of Diego Mendez and of Jerome for not writing to me, and also of all the others, who, as soon as they reach there, cease to correspond with me.

You must investigate whether the Queen, whom God has in His glory, said something in her will about me. It is also important for us to urge the Bishop of Palencia to hurry up. To him Their Highnesses were indebted for having the Indies, as he was the cause that I remained in Castile, when I already had started to leave it. The lord chamberlain of His Highness must also be hurried up.

You must endeavor, when the opportunity arrives, that they see the instrument in writing which is in the book of my privileges, wherein the reason is explained, as I told you in another letter, why the third and the eighth and the tenth are due to me.

I have written to my holy friend, the father, because he complained of my silence. I send you a copy of this letter. I wish the King, our lord, or the Bishop of Palencia, would see this father before I send my letter, so as to avoid misrepresentation. Camacho has made thousands of false statements against me. I would, much to my regret, arrest him. He is in the church, and says that when the holidays are over he will go there, if he can. He must prove what I owe him. I state upon my oath that I do not know to owe him anything, and that what he says is not true.

If, without being importunate, a permit can be obtained to ride on muleback, I would try to go there after the month of January. But then I will start anyhow in some other way, if the permit is not obtained. But let them make haste in providing the necessary for the preservation of the Indies and preventing their loss from being consummated.

May our Lord keep you in His holy guard.

Dated December 21st.

Your father who loves you more than himself.

S.
S. A. E.
X. M. Y.
XPO FERENS.

XX.

POSTSCRIPT WRITTEN ON BACK OF LETTER OF COLUMBUS TO HIS SON DIEGO DATED DECEMBER 21, 1504.

[Original in the collection of the Duke of Veragua, Madrid.]

†

This tenth which they give me is not the tenth promised The letters of privilege explain it well. The tenth of the profit made out of all the merchandise brought here, and of all other things, is due to me, and nothing in this respect is given to me. Carbajal understands well what I mean. Carbajal must not forget to secure a letter from His Highness to the governor directing him to send his accounts at once, and without delay, and also all the moneys which I have there. And it would be better for us, as the said sum must be a large one, that His Highness should send one of his servants to receive it.

I will endeavor here to obtain from these lords of the board of trade (Contratacion) an order instructing the said governor to send my money together with the gold belonging to Their Highnesses. But one thing must not interfere with the other. I think that the money belonging to me, accumulated there after my departure, amounts to seven or eight thousand dollars. Besides this, there is the money which they had retained before I left.

To my very dear son Don Diego, at the court.

XXI.

LETTER FROM COLUMBUS TO NICOLO DE ODERIGO. DATED DECEMBER 27, 1504.

[Original in the Municipal Palace, Genoa.]

†

VIRTUOUS SIR: When I started on my voyage to the places from where I have just come, I spoke at length with you. I understand that you remember well all that then was said.

When returning here I was in hopes to find some letters from you, or some messenger who would tell me verbally something in your name.

At about the same time of my departure from here I sent to you with Francisco de Ribarol a book containing copies of

several letters, and another in which all the grants and privileges given me were also copied, the whole inclosed in a red morocco case with a silver lock. I also sent with the same man two letters for the St. George gentlemen, in which I assigned to them the tenth of my revenue in consideration of and compensation for the reduction made on the duties on wheat and the other supplies. To nothing of this I have had any reply. Micer Francisco says that everything arrived safely. If this is the case the failure of the St. George gentlemen to answer to my letters is an act of discourtesy for which the treasury is by no means better off. This is the reason why it is generally said that to serve common people is serving no one.[1]

Another book of my privileges, equal (similar) to the one above mentioned, was left by me at Cadiz with Franco Catanio (who is the bearer of this letter) with instructions to send it to you in order that you would keep it together with the other in some safe place, at your discretion.

At the time of my departure I received a letter from the King and Queen, my lord and lady. It is written there. Look at it and you will find it very good. Nevertheless, Don Diego was not given possession, as it was promised.

While I was in the Indies I wrote to Their Highnesses, through three or four channels, about my voyage. One of those letters came back to me, and sealed as it was, I inclose it in this and send it to you. In another letter I inclose also a supplement to the above description of my voyage, and I pray you to give both to Micer Juan Luis, to whom I also have written and said that you will be the reader and interpreter of the said letters.

I am anxious to hear from you, especially about the plan which we agreed to.

I arrived here very sick, and at about the time in which the Queen, my lady (whom God has with Him), died, and I could not see her.

Up to the present, it is impossible for me to tell you what will be the practical result of all my doings. I suppose that Her Highness has properly provided in her will for everything concerning this matter, and the King, my lord, always gives good answers.

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[1] Quien sirve a comun, no sirve a ningun.

Franco Catanio will verbally explain to you at length all the rest.

May our Lord keep you in His guard.

From Seville, December 27th, 1504.

S.
S. A. S.
X. M. Y.
XPO FERENS.

Great Admiral of the Ocean, Viceroy and Governor-General of the Indies.

XXII.

LETTER FROM COLUMBUS TO HIS SON DIEGO. DATED DECEMBER 29, 1504.

[Original in the collection of the Duke of Veragua, Madrid.]

†

MY VERY DEAR SON: I wrote to you at great length, and sent my letter by Don Fernando, who left here twenty-three days ago, in company with the adelantado and Carbajal, and from none of you I have heard ever since. Sixteen days ago I wrote to you another letter, which I sent by Zamora, the postman, inclosing a letter of credit for the merchants there, endorsed by Francisco de Rivarol, ordering him to give you the money you might ask for. Subsequently, about eight days ago, I wrote to you again by another postman and inclosed another letter of credit, endorsed by Francisco Soria, and I addressed my communication in care of Pansaleon and Agustin, the Italian, who were requested to deliver it to you. I also inclosed a copy of a letter which I wrote to our holy friend, the Father, on the affairs of the Indies, to prevent him from complaining against me. And I sent this copy to you in order that either Highness, or the Bishop of Palencia, may read it and to avoid misrepresentations.

The pay of these people who went with me has been delayed, and I have had to provide for them as far as I could. They are poor, and moved by their anxiety to make a living decided to go there. They have been promised here to be dealt with as much favor as possible, and this is simply justice, though there are some among them more deserving of punishment than of reward. I say this in reference to the runaways.

I gave these people a letter for the Bishop of Palencia. Try to read it and to cause your uncle, your brother, and Carbajal to read it also, so as to enable you all to aid the bearers in securing success for the petitions they are going to make to His Highness. You yourself must help them all that you can, as it is just, besides being a work of mercy. Never any people earned their money with so much danger and fatigue as these have done, and none either have rendered such a great service as they have. They say that Camacho and Master Bernal are anxious to go there. They are two of those creatures for whom God does not make many miracles. If they go, it will be to do harm rather than good. But they can do little, because truth shall always prevail, as it happened when so much turmoil was raised upon false statements at La Espanola. This Master Bernal was the one who started the treasonable movement. He was arrested and charged with many crimes, for each one of which he deserved to be quartered. At the request of your uncle and others he was pardoned, on condition, however, that said pardon would be revoked and he would be again liable to be punished in the proper way if he would say the slightest thing against me and my officers. I inclose here a copy of the record, which shows the whole of this business. As to Camacho, I will send you some legal papers referring to him. For more than eight days he has remained inside the church, without daring to leave it, for fear of the trouble into which he may get for his rashness and slanders. He has in his possession a will made by Terreros; but some relations of this Terreros have another will, subsequent in date, which annuls the former, as far as the disposition made of the property is concerned. And I have been requested to attend to the fulfillment of the second will and the execution of all that is provided by it, and therefore I am bound to compel Camacho to make restitution of what he has received. I shall attend to the preparation of the proper legal documents, which I shall have served on him. I believe that punishing him is a work of mercy. His tongue knows no restraint. Some one has to punish him without the use of the rod, and that punishment will be harder for him and better for the conscience of the chastiser.

Diego Mendez is well acquainted with Master Bernal and his doings. The governor wanted to put him in prison while at the Espanola; but at my request he left him free. They say that he killed there two men with some poison, in revenge for some wrong which did not amount to three beans.

If the permit to ride on muleback can be obtained without trouble, I would be pleased. Then I would like, also, to have a good mule.

Take advice with all about our business. Tell all others that I do not write to them because of the great pains that writing makes me suffer. But they must not imitate my example, but on the contrary write to me, each one separately, and very often. How grieved I feel when I see that everybody here receives letters from there and that I, who have so many of my people there, do not receive any. Give my regards to the adelantado, to your brother, and all the others.

Dated at Seville, December 29.

Your father, who loves you more than himself.

S.
S. A. S.
X. M. Y.
XPO FERENS.

I further say that if our affairs are to be settled according to the dictates of conscience, the chapter of the letter which Their Highnesses wrote to me when I sailed, in which they say they would order to give you possession of all, must be shown and made use of. And then you must make use also of the instrument in writing which is in the book of my privileges, which explains the reason why in all justice and equity the third, the eighth, and the tenth are mine. There will be always time afterwards to make reductions.

XXIII.

LETTER FROM COLUMBUS TO FATHER D. GASPAR. DATED JANUARY 4, 1505.

[Original in the collection of the Duke of Veragua, Madrid.]

†

REVEREND AND MOST PIOUS FATHER: Diego Mendez has come from the court. Don Diego is there well. The adelantado and Don Fernando had not arrived yet. I will send them all to you with information of everything. I do not know how to say how much I wish to see you and communicate to you something which must not be trusted to the pen. I should like to peruse those instruments in writing and privileges which you have in your possession, and order a box to be made of cork, lined with wax, to keep those papers. I ask you as a

great favor to send them all to me by that honest man, the lay brother, if he is coming, and if not, by Andrew, the brother of Juan Antonio, bearer of this letter.

I am, thanks to our Lord, improving daily in my health.

My kind regards to the reverend father superior and to all the religious members of your house.

Dated this Saturday, the 4th of January.

Always ready to do what your reverence may command.

S.
S. A. S.
X. M. Y.
Xpo Ferens.

XXIV.

LETTER FROM COLUMBUS TO HIS SON DIEGO. DATED JANUARY 18, 1505.

[Original in the collection of the Duke of Veragua, Madrid.]

†

My Dearest Son: I wrote to you a long letter which I forwarded by a messenger who will reach you to-day. I sent you also a letter for the lord chamberlain. I intended to inclose in it a copy of that chapter of the letter of Their Highnesses in which they promised to order you to be put in possession of everything, but I forgot to make the copy. Zamora, the postman, came. I read your letter, and also those of your uncle, your brother, and Carbajal. I was very happy to know that they had safely arrived, because I had experienced great anxiety in that respect. Diego Mendez will leave here in three or four days, and will take the draft with him. He will carry also a full statement of everything. I shall write to Juan Velasquez, whose friendship and services I desire to obtain. I believe that he is a very honorable gentleman. Tell the Bishop of Palencia if he has arrived there, or if not, when he arrives, that I have been very much pleased with his prosperity, and that if I go there I will stop where he is, even if he is unwilling, and that we both have to come back to our first brotherly love for each other, which he will have no power to refuse, because my services to him will force him to grant it. The copy of my letter to our holy friend, the father, was sent to you, as I said, in order that you might show it to the Bishop of Palencia if he was there, or to the Archbishop of Seville, for

fear that the King might have no time to look into this matter. I have told you that the petition to Their Highnesses must be for the fulfillment of what they wrote to me about the possession and of all the other promises which were then made; and I said that it was important to show him the chapter aforesaid of their letters. I recommended further that all of this should be done without delay, as it is advisable, for innumerable reasons, to act in this matter speedily. Let His Highness be persuaded that no matter how much he gives me, it will be always in the proportion of one to one hundred when compared with the increase of his dominions and revenue, and furthermore, that what has been already done is nothing in comparison with what is to be done in the future. The sending of a bishop to the Espanola is a matter which must be delayed until I have spoken with His Highness, lest it may happen like in the other case, in which things were spoiled instead of being mended.

We have had here, and still are having, some very cold days, which have done me, and continue to do, much harm. Give my best regards to the adelantado. May our Lord bless you and your brother and keep you both in His holy guard. Remember me to Carbajal and Jerome. Diego Mendez will arrive there with the pocket full. I think that the business about which you wrote can be easily transacted. The vessels from the Indies have not yet arrived from Lisbon. They have brought much gold, but none for me. Such a great mockery has never been seen. I left there sixty thousand dollars smelted. His Highness should not allow such great affairs to be ruined.

The governor sends now some new application, but I do not know for what purpose. I am waiting for letters. Be careful in expending the money; it is advisable to do so.

Dated January 18th.

Your father, who loves you more than himself,

S.

S. A. S.

X. M. Y.

XPO FERENS.

XXV.

LETTER FROM COLUMBUS TO HIS SON DIEGO. DATED FEBRUARY 5, 1505.

[Original in the collection of the Duke of Veragua, Madrid.]

†

MY DEAREST SON: Diego Mendez left here on Monday, the 3rd of the present month. After he left I spoke with Americus Vespuce, the bearer of this letter, who goes there, where he has been called on business of navigation. He always wanted to please me. He is a very honest man. Fortune has been as adverse to him as to many others, and his labors have not been so fructiferous to him as it was reasonable to expect. He goes for my good, and very anxious to do everything which may prove beneficial to me if it is within his power. I do not know of any particular thing in which I might instruct him to my benefit, because I do not know exactly for what he is wanted there. But he goes determined to do for me all that he may possibly do. You must see what kind of service he may render to my advantage, and cooperate with him in having it rendered. He will work and speak and do everything suggested, but the suggestion must be made secretly, so as to remove suspicion. I have told him all that can be said concerning these matters, and have informed him of the reward which they have given and continue to give to me.

This letter must be deemed as written also to the adelantado, in order that he may see also what service Vespuce may render, and communicate with him.

His Highness must be sure that his vessels were in the best and richest part of the Indies, and if there is anything else to be known, in addition to what has been already said, I will give the information orally, because it is impossible to put it in writing.

May our Lord keep you in His holy guard.

Dated at Seville, February 5th.

Your father, who loves you more than himself,

S.

S. A. S.

X. M. Y.

XPO FERENS.

XXVI.

LETTER FROM COLUMBUS TO HIS SON DIEGO. DATED FEBRUARY 25, 1505.

[Original in the collection of the Duke of Veragua, Madrid.]

†

MY DEAREST SON: Licenciate de Zea is a gentleman whom I want to do honor. He has in his charge the cases of two men who were subject to criminal prosecution, as it appears from the inclosed papers. See that Diego Mendez takes all the steps necessary to have those petitions presented to His Highness, together with the others, on the day of the coming Holy Week, in which it is customary to grant pardons. If the pardon is then granted, all right but, if not, you all must look into some other manner of obtaining it.

May our Lord keep you in His holy guard.

Dated at Seville, February 25, 1505.

I wrote to you and sent my letter by Americus Vespuce. See that he sends to you the letter if you have not received it yet.

Your father, XPO FERENS.

XXVII.

DRAFT OF LETTER OF COLUMBUS RELATING TO HIS CLAIMS AGAINST THE CROWN OF SPAIN, BASED ON THE PRIVILEGES AND CONCESSIONS GRANTED TO HIM BY THE CONTRACT WITH THE SPANISH SOVEREIGNS, FERDINAND AND ISABELLA.

[Original in the collection of the Duke of Berwick-Alba, Madrid.]

"Report on my privileges and concessions.
(Jhs cumas. t no * * *"
Jesus cum Mari sit nobis in vita.)
May Jesus and Mary be with us in life.

†

MAGNIFICENT SIRS: It appears from your privilege and the articles of agreement entered into with you that Their Highnesses appointed you Admiral of the Ocean Seas, which they defined by causing a line to be drawn from pole to pole, crossing the Cape Verde Islands and the Azores, and that they granted to you exactly the same rights, honors, and favors as are enjoyed by the Lord Admiral of Castile within his own district.

Item. They graciously appointed you also Viceroy and Governor-General of all the islands and continents, whether already discovered or to be discovered, on the other side of the line aforesaid, and they granted you the power to appoint all the officers who should be required for the administration of the government of the said islands and continents.

Item. They also gave you the tenth of everything received from the district subject to your jurisdiction as Admiral, after deducting the expenses.

Item. They gave you likewise the eighth of all the profits made out of expeditions, or fleets, sent to the Indies, to the equipment of which you had contributed by paying one-eighth of the expenses.

It appears from the acts of confirmation of your privileges that you are the discoverer of the islands and continents of the Indies. If anything is now discovered there it will be owing to you and your industry, and can not properly be called discovery. You are the one who discovered the Indies, in spite of the doubts which were raised about their existence, and of the great opposition raised against you, both by men of learning and by people of practical knowledge in navigation and matters connected with the sea, who all said that you were joking and that God had never placed any land where you said. Whoever goes now to the Indies, even if he goes to places where you never set your foot, can not as against you be called a discoverer, for he only goes to a district which is already under your jurisdiction as Admiral, and enters seas or lands which were discovered by you. Under these circumstances, your rights and authority as Admiral and Viceroy and Governor-General, and your power to make appointments for all offices, are to be exercised in and over the whole district, whether in land or on the sea, whether already traveled or to be traveled hereafter, on the other side of the line which has been mentioned before. Beyond that line you are the only one having authority to attend, in the name of Their Highnesses, to all the business of the Government, to hear and decide all cases and causes, to affix the royal seal entrusted to you for such purposes to all letters patent to be issued there, to administer justice in civil and criminal matters, and to have and exercise full power and jurisdiction in everything relative to the administration of said Government, as more in full described in the ordinances and letters of concession and privileges which I have examined.

It appears, furthermore, that by a royal letter of 1497, issued at Medina, Their Highnesses freed you from sharing the expenses incurred up to that date on account of this business, and exempted you also from contributing toward defraying the expenses of the expedition which was then being equipped, and you had to take to the Indies. The said royal letter says that you are bound to pay nothing on this account, except in case of expenses incurred subsequent to your arrival to Hispaniola. You are free from paying expenses prior to that moment, but you can not either demand anything out of what was brought here during the same period.

As you admit to having arrived there on the 31st of August, 1489, a liquidation must be made of all the expenses incurred ever since, and you shall be bound to contribute such portion thereof as has been agreed upon.

From the agreements entered into with the Lord Admiral of Castile it appears that he is entitled to one-third of all the profits made on the sea, either by him or Their Highnesses' navy. Whereupon, under your own letters of concession which gave you exactly the same rights and privileges as are given the Lord Admiral of Castile, you are entitled to a third of the profits.

It appears from the agreements entered into with you in regard to the share you ought to have out of the profits made and to be made in this business of the Indies, that the said share belongs to you under three different considerations and for three different reasons. Your share under each head is clearly stated, and there is no possibility of error or misunderstanding in this respect. The liquidation of the profit is simply a matter of arithmetic, as in the following example:

A man fits out a vessel and says to one of his servants: "I make you master of this vessel; go, and you shall have one-third of all the profits." Then he calls another servant and says to him: "Go on board the vessel to be the purser and you shall have the tenth." Finally he calls a third servant and tells him: "Go as a clerk, and whereas you have contributed one-eighth of the expenses you shall have also the eighth part of the profits."

The vessel sailed, and on her return it was found out that the profits amounted to ten ducats. The master says then to the man who fitted out the vessel: "Sir, the profits amount to ten ducats; order the third part of that sum to be given to me

as promised," and so he ordered. Then comes the purser and says: "Sir, the profits were ten ducats; order a tenth of that sum to be given to me as promised," and so he ordered. Finally the clerk comes and says: "Sir, I contributed one-eighth of the expenses to fit out this vessel; the profits made by her are ten ducats; cause one-eighth of these ten ducats to be given to me," and so he did.

An account like this is to be made to liquidate the share which, under the concessions made in your favor in this business of the Indies, belongs to you. It would be wrong to give you the tenth of the whole, and then the eighth of the balance not of the whole, and then the third of the second balance, and not also of the whole. Such a manner of making the calculation would be unacceptable, as each chapter or heading clearly fixes the portion which under it must be paid to you.

In regard to the expenses, my opinion is that as our lord has given enough in this business to pay amply all those which have been incurred, you might as well be satisfied with seeing them paid, if so pleases Their Highnesses, out of the gold or anything else of value which may be found there, and with having your share of the profits paid to you by Their Highnesses out of the net balance.

I have noticed that your deeds contain a provision made by Their Highnesses, ordering that nothing must be done in regard to the Indies without your personal intervention or the intervention of a person having your power of attorney.

I have also noticed another provision under which nothing can be sent to the Indies without your signature and the signature of the person appointed at Cadiz for such purposes by Their Highnesses, nor can anything brought from the Indies be received here without the signature both of the said person and of the deputy comptroller.

I have seen also a bull of the holy father which is on file among your papers, which states that you were and are the one who discovered and won those Indies as a servant of Their Highnesses.

From all your letters of privileges and concessions it appears, as already stated, that you must have by reason of your rights, equal to those of the Lord Admiral of Castile, one-third of everything obtained within the limits placed under your jurisdiction as Admiral of the Ocean Sea, and by reason of your other concessions, the eighth and the tenth of the same. If

Their Highnesses make some other concessions in the Indies without saying what is yours a wrong will be inflicted upon you, and this wrong will be done whether the new concession applies to money matters or in regard to the right of making appointments, or whether it concerns so-called new discoveries or not. The discovery of the Indies was, as above stated, the basis and the consideration upon which the agreements were made and entered into with you and executed and signed, and as soon as you discovered the first island you discovered the Indies, and your part of the contract was fulfilled. It was then that the Indies were given to Their Highnesses by the bull of donation issued by the Pope.

Their Highnesses are in conscience bound to indemnify you for all damages which any deprivation of your rights may cause you to sustain.

Gentlemen, I ask for nothing, and I place into the royal hands of the Queen and refer to her all that is stated in the foregoing writing. I shall show to your lordships my titles and letters of privilege whenever desired.

Another privilege which I have seen in your papers granted to you is the power to convey your office of Viceroy and Admiral and Governor-General and all your property unto Don Diego, your son, or unto whomsoever you may be pleased, and that none of the said offices and nothing of the said property can ever be taken away, whether for debts or criminal offence, unless the latter is a crime lessæ majestatis.

XXVIII.

AUTOGRAPHIC STATEMENT BY COLUMBUS OF GOLD BROUGHT FROM AMERICA AND SOLD BY HIM IN CASTILE. DATE UNKNOWN. PROBABLY IN 1493.

[Original in the collection of the Duke of Berwick-Alba, Madrid.]

On July 13 Christobal de Torres sold at Seville 2 marks, 7 ounces, 4 ochavas of gold, at 453, the weight of a castellano. On August 12, at Valladolid, Carbajal sold 2 marks, 6 ounces, 4 ochavas, 3 tomins, almost all of which was given by him in payment of the clothing which he bought for himself. September 11, at Arcos, Carbajal sold 6 ounces, 2 ochavas, 1 tomin, 3 grains. All was sold at ———. September 19, Burgos, 4 ounces, 7 ochavas, 3 tomins were weighed. October 7, Carbajal sold 7 ounces, 4 ochavas, 5 tomins, 3 grains, at 445. October 25, Burgos, Carbajal sold 7 ounces, 4 ochavas, 1 tomin, 10 grains,

at 445. November 12, Burgos, Carbajal sold 1 mark, 6 ounces, and 7 ochavas, less 14 grains, at 448. December 17, Burgos, Carbajal sold 7 ounces, 5 ochavas, and 3 tomins, at 446. January 10, Burgos, Carbajal sold 1 mark, 6 ounces, 1 ochavas, at ———. February 6, Burgos, Carbajal sold 7 ounces, 4 ochavas, 4 tomins, 4 grains, at 445. February 13, Burgos, Juan Antonio sold 7 ounces, 6 ochavas, 1 tomin, at 450. February 28, Burgos, Juan Antonio sold 4 marks, 5 ounces, 6 ochavas, and 3 tomins, at 450. March 15, or before, Burgos, Juan Antonio sold 1 mark (this item covers the transaction or business of the "funda"), charged to him, at 453. December 30, Burgos, Juan Antonio sold to the silversmith who made the seal 4 ounces, 2 ochavas, 3 tomins, at 448. January 24, Burgos, Carbajal sold 1 mark, 4 ochavas, 3 tomins, at ———. March 3, Juan Antonio gave to the silversmith, in payment of the necklace made by him, 1 ounce and 2 tomins, at 453. The sum of 91 reals was due to the said silversmith for 47 links which the necklace has, at 2 reals per link.

At the foot of the page on the left corner Columbus made the following note: "Two hundred and thirty-four doredos which Don Diego gave me on ———."

The title given by Columbus to this paper, written by him across the left margin, was: "Statement of the gold sold in Castile up to the months of ———."

XXIX.

TRANSLATION OF ORIGINAL DRAFT BY COLUMBUS FOR ONE HUNDRED GOLD CASTELLANOS. DATED AT GRANADA, 23D OCTOBER, 1501.

[Original in the collection of the Duke of Berwick-Alba, Madrid.]

MOST VIRTUOUS SIR: I pray you to cause one hundred gold castellanos, which I need here to go to Seville, to be loaned to me. You will be pleased to order them to be given to the bearer, Diego Tristan, my major-domo, who will acknowledge the receipt thereof on the back of this draft.

Done on Friday, the 22d of October, 1501.

S.
S. A. S.
X. M. Y.
THE ADMIRAL.

On the back (in the handwriting of someone else):

X.

THE ADMIRAL OF THE INDIES. 3 x l v ii j p d.

I, Diego Tristan, do hereby acknowledge to have received of the treasurer, Alonzo de Morales, the one hundred gold castellanos to which the present draft of the admiral refers, said amount being equal to 48,500 maravedis. In whose testimony I have hereunto subscribed my name, at Granada, on the 23d of October, 1501.

DIEGO TRISTAN. (Autograph.)

Memorandum in continuation of the above in Columbus's handwriting:

The above amount was deducted from the 150,000 which afterwards were given to me at Seville, by order of Her Highness, to aid me in defraying the expenses, and the receipt of which I acknowledged.

XXX.

TRANSLATION OF THE CONTRACT BETWEEN COLUMBUS AND THE SOVEREIGNS FOR THE FIRST VOYAGE.

[Original in the collection of the Duke of Veragua, Madrid.]

In the name of the Holy Trinity and Eternal Unity, Father, Son, and Holy Ghost, three persons really distinct and one divine essence, who lives and reigns forever without end; and of the most Blessed Virgin, glorious Holy Mary, our Lady, His Mother, whom we hold as Lady and Advocate in all our undertakings; and to the honor and reverence of her, and of the most blessed Apostle St. James, light and mirror of the Spains, patron and guide of the Kings of Castile and of Leon; and likewise to the honor and reverence of all the other saints of the Celestial Court; as man, by whatever knowledge he may have of the world, can not, according to nature, completely know what God is, but may know Him by seeing and contemplating His wonders and the works and deeds which He performed and performs every day, because all the works are the effect of His power and are governed by His wisdom and maintained by His goodness; and so, man may understand that God is the beginning, the middle, and end of all things, and that they are included in Him and He maintains each one in that state in which He placed it in the order (of the world), and all stand in need of Him and He of none, and He can change them whenever it may be agreeable to His will;

and He can not be subjected to change nor be changed in anything; and He is called the King of Kings, because from Him they derive their name and reign through Him, and He governs and preserved them, who are Vicars (each one in his own kingdom) placed by Him over the people to maintain them temporarily in justice and in truth, which is fully demonstrated in two ways—the one spiritual, according as the prophets and saints demonstrated, upon whom our Lord conferred the grace of understanding those things certainly and make them be understood by others; the other natural, as the philosophers demonstrated, who understood those things naturally, for the saints declared that the King is established upon earth in the place of God to render justice and give to everyone his right, and on this account they called Him the heart and soul of the people; and as the soul resides in the heart of man and the body lives and is preserved by it, so justice is established in the King, which is the life and preservation of the people of his dominions. And as the heart is one, and through it all the other members receive unity so as to form one body, in like manner all the inhabitants of the Kingdom, although many, are one, because the King must be and is one, and through Him all have to be one with Him to follow and assist him in the things he has to perform. Then philosophers naturally declared that kings are the heads of kingdoms, for in the same manner as sentiment springs from the head, which commands all the other members of the body, in like manner by the command which emanates from the King, lord and head of all, the inhabitants of the Kingdom must be directed and governed, and they have to obey Him; and so great is the right of kingly power that all the laws and rights are in the power of kings, who acknowledge it not from men, but from God, whose place they hold in temporal affairs. Among other things it especially behooves the King to love, honor, and preserve his people, and among these he must particularly distinguish and honor persons meritorious either by services rendered to him or on account of their being endowed with goodness. And as, according to the sayings of the wise, justice is one of the virtues peculiar to kings, which is the support and truth of things, by which the world is better and more justly preserved, being likewise a fountain from which every right is derived, and remains always alive in the minds of just men and never fails giving and distributing to each one equally

his right, and embracing in itself all the principal virtues, and very great utility arises from it, because it engages every person to live with prudence and in peace according to his state without fault and without error, the good becoming through it better by receiving a reward for their deeds rightly performed, and the others correcting themselves and entering through it into the right road. Of which justice there are two principal parts—the one is communicative between man and man, the other is distributive, which carries with it the rewards and recompenses of the good and virtuous labors and services which individuals render to kings and princes and to the commonweal of their kingdoms; and as the conferring a reward upon those who serve well and faithfully is an attribute, as the law says, very becoming to all mankind, and more especially to kings, princes, and great lords, who have the power of doing it, and whose proper office it is to honor and elevate those who serve them well and faithfully and who are worthy of it on account of their virtues and services; and kings in conferring rewards upon worthy actions show by that their acknowledgment of virtue and love of justice, for justice consists not only in giving an example of punishment as a terror to the wicked, but likewise in recompensing the good, and besides this a signal advantage arises from it, because it excites the good to become better and the wicked to correct themselves, and by not acting thus the contrary might take place; and since among other rewards and remunerations which kings have it in their power to bestow upon them truly and faithfully, there is that of honoring and elevating them above all the others of their race, and ennobling, decorating, and honoring them, and conferring many other kindnesses, favors, and graces upon them.

We, considering and reflecting upon the abovesaid things, will, that, by this, our patent of privilege, and by a copy of it signed by a public scrivener, present and future generations may know, that we, Don Ferdinand and Doña Isabella, by the grace of God King and Queen of Castile, Leon, Aragon, Sicily, Granada, Toledo, Valencia, Galicia, Majorca, Seville, Sardinia, Cordova, Corsica, Murcia, Jahen, Algarve, Algesita, Gibraltar, and the Canary Islands, Count and Countess of Barcelona, Lords of Biscay and Molina, Dukes of Athens and Neopatria, Counts of Roussillon and Cerdan, Marquises of Orestan and Goziano, have seen a patent of grace signed with our names, and sealed with our seal, drawn up as follows:

Don Ferdinand and Doña Isabella, by the grace of God King and Queen of Castile, Leon, Aragon, Sicily, Granada, Toledo, Valencia, Galicia, Majorca, Seville, Sardinia, Cordova, Corsica, Murcia, Jahen, Algarve, Algesita, Gibraltar, and the Canary Islands, Count and Countess of Barcelona, Lords of Biscay and Molina, Dukes of Athens and Neopatria, Counts of Roussillon and Cerdan, Marquises of Orestan and Goziano: Inasmuch as you, Christopher Columbus, are going by our commands to discover and conquer with some of our vessels and our subjects certain islands and mainland in the ocean, and as it is hoped, with the assistance of God, that some of the aforesaid islands and mainland in the said ocean will be discovered and conquered through your labor and industry, and it being just and reasonable that for exposing yourself to such danger for our service you should be rewarded: We, desiring on that account to do you honor and favor, declare it to be our will and pleasure that you, the abovesaid Christopher Columbus, when you shall have discovered and conquered the said island and mainland in the said ocean, or any one whatsoever of them, be our Admiral of the said islands and mainland which you shall thus discover and conquer, and be our Admiral, Viceroy, and Governor of them, and that you may from this time forward style and entitle yourself Don Christopher Columbus, and likewise your children and successors in the said office and charge may entitle and call themselves Don, Admiral, Viceroy, and Governor of them; and that you may use and exercise the said office of Admiral with the aforesaid office of Viceroy and Governor of the abovesaid islands and mainland which you discover and conquer as well by yourself and by means of your lieutenants, and hear and determine all suits and civil and criminal causes respecting the said office of Admiral and of Viceroy and Governor according as you will find by right and in the manner in which the admirals of our kingdoms were accustomed to use and exercise it; and that you may punish and chastise delinquents and use the said office of Admiral, Viceroy, and Governor, you and your abovesaid lieutenants, in all that concerns and is annexed to the said offices and to each one of them, and that you may have and receive the rights and fees belonging and annexed to the said offices and to each of them according as our high admiral in the admiralty of our kingdoms receives and is accustomed to receive them. And by this our patent, or by a copy of it, signed by a public

scrivener, we command the Prince Don John, our most dearly beloved son, the Infantes, dukes, prelates, marquises, counts, masters of orders, priors, companions, and those of our council, and the auditors of our chamber, alcaldes, and other officers of justice, whoever they may be, of our household, court and chancery, and the governors of castles and strong and open places, and all counselors, assistants, corregidors, alcaldes, bailiffs, and sheriffs, and the twenty-four sworn chancellors, esquires, officers, and good men of all the cities, towns, and places of our kingdoms and dominions, and of those which you shall conquer and acquire, and the captains, masters, mates and officers, mariners and seamen, our subjects and natives, who now are and shall hereafter, and every one and whomsoever of them, that the said islands and mainland in the ocean, being discovered and acquired by you, and they being taken, and the solemnities that are required on such occasions having been observed by you, or by the person who shall receive the power for you, to have and to hold to you hereafter, during all your life, and after you, your son and successor, and from successor to successor forever, as our Admiral of the said ocean, and as Viceroy and Governor of the aforesaid islands and mainland, which you, the abovesaid Don Christopher Columbus, shall discover and acquire; and to treat of whatever regards such things with you, and with your abovesaid lieutenants, whom you shall place in the said offices of admiral, viceroy, and governor, and to exact and cause to be exacted for you, with quittance, the fees and other things annexed and belonging to the said offices; and to observe, and cause to be observed towards you all the honors, graces, favors, liberties, preeminences, prerogatives, exemptions, and immunities, and all and every other thing which by right of the said offices of Admiral, Viceroy, and Governor you are to have and enjoy, and which are to be maintained to you in all, well and completely, in such manner as not to be diminished in anything; and not place, nor permit to be placed, any sequestration upon nor offer any opposition to them; because we, with this our patent, now and forever, make a grant to you of the said offices of Admiral, Viceroy, and Governor, by right of inheritance forever; and we give you possession of them, and of every one of them, with the power and authority to use and exercise them, and to take the fees and salaries annexed and belonging to them, and every one of

them, according as has been said. And for as much as has been said, if it were necessary, and if you should demand it, we order our chancellor, notaries, and other officers who are employed in the office of our seals to give, expedite, and seal for you our patent to privilege, folded up in the form of a roll, in the strongest, most firm, and fit manner, and that you may demand of them, and be necessary for you; and none of you act, nor let act, otherwise in any manner, under the penalty of our displeasure, and of ten thousand maravedis for our chamber, upon any pretense whatsoever. And moreover, we enjoin the individual who presents to you this our patent to cite you to appear before our presence in our courts, wherever we may be, within the fifteen next following days from the day of the citation, under the aforesaid penalty; under which we command every public scrivener whatsoever, who for this purpose shall be called upon to give to him who shall have presented this paper a certificate signed with his signet, in order that we may know how our command is executed.

Given in our city of Granada on the thirtieth day of the month of April, in the year of the nativity of our Lord Jesus Christ one thousand four hundred and ninety-two.

I, THE KING.
I, THE QUEEN.

XXXI.

ROYAL LETTERS PATENT FROM THE SOVEREIGNS OF SPAIN, COMMANDING THE INHABITANTS OF PALOS TO FURNISH CHRISTOPHER COLUMBUS EVERYTHING NECESSARY TO EQUIP THE CARAVELS FOR HIS FIRST VOYAGE.

[Original in the collection of the Duke of Veragua, Madrid.]

Don Ferdinand and Doña Isabella, by the grace of God King and Queen of Castile, Leon, Aragon, etc., to you, Diego Rodrigues Prieto, and to all other persons inhabitants of the town of Palos, greeting: You are well aware that in consequence of some offense which we received at your hands you were condemned by our council to render us the service of two caravels armed at your own expense for the space of twelve months whenever and wherever it should be our pleasure to demand the same, this service to be rendered under certain penalties, as stated more at large in the sentence given against you.

And inasmuch as we have ordered Christopher Columbus to proceed with a fleet of three caravels, as our captain, to certain parts of the ocean, upon a matter connected with our service, and we desire that the two caravels the service of which you owe us as abovesaid should be placed at his disposal, we hereby order that within ten days from the sight of this letter, without delay or waiting for any further directions, you have in complete readiness the said two armed caravels for the service of the abovesaid Christopher Columbus in the enterprise upon which we have dispatched him, and that they be placed at his command from that time forth; and for the crews of the said two caravels we order him to pay you forthwith four months' wages at the same rate with which the crew of the other caravel is paid, being the common allowance for ships of war.

The vessels thus placed under his direction shall follow the route ordered by him on our part, and obey him in all other orders, provided that neither you nor the said Christopher Columbus, nor any other person belonging to the said caravels, shall proceed to the mine, nor to the countries in that neighborhood, occupied by the King of Portugal, our brother, as it is our desire to adhere to the agreement existing between us and the said King of Portugal upon that head.

And having received a certificate from the said captain that he had received the said two caravels from you, and is satisfied with the same, we shall consider you as having discharged the obligation imposed upon you by our council as abovesaid, and we hereby declare you thenceforth free from the same; but in the event of the nonfulfillment of or procrastination of the above order we shall forthwith command the execution of the penalties contained in the aforesaid sentence upon each one of you and your goods.

The above requisition is to be complied with throughout, under pain of our displeasure and a penalty of ten thousand maravedis for the nonperformance of any part thereof, to which end we hereby order under the said penalty, whatever public notary may be called upon for that purpose to furnish you with the proper signed attestations, that we may be assured of the fulfillment of our orders.

Given in the city of Granada on thirtieth day of April, in the year of our Lord Jesus Christ one thousand four hundred and ninety-two.

I, THE KING.
I, THE QUEEN.
JUAN DE COLOMA,
Secretary of the King and Queen, etc.

Done in due form.
RODERICUS, *Doctor.*
Registered.
SEBASTIAN DE OLANO,
FRANCISCO DE MADRID,
Chancellors.

XXXII.

ROYAL LETTERS PATENT FROM THE SOVEREIGNS OF SPAIN GRANTING LICENSE TO THE PERSONS ACCOMPANYING COLUMBUS ON HIS FIRST VOYAGE.

[Original in the collection of the Duke of Veragua, Madrid.]

Don Ferdinand and Doña Isabella, by the grace of God King and Queen of Castile, Leon, Aragon, etc., to the members of our council, oidors of our court of audience, corregidores, asistentes, alcaldes, alguacils, merinos, and all other magistrates whatsoever of all the cities, towns, and villages of our kingdoms and dominions, to everyone who shall see this writing or a copy of the same attested by a public notary, greeting:

Be it known to you that we have ordered Christopher Columbus to proceed to sea for the accomplishment of certain business for our service, and as we are informed by him that in order to man the fleet which he is to command for the execution of this purpose it is necessary to grant security to the persons composing the crew of the same, who would be otherwise unwilling to embark, and being requested by him to give the necessary orders for this measure, we have determined to grant what is demanded by him relating to this matter.

We therefore grant a security to each and every person belonging to the crews of the fleet of the said Christopher Columbus in the voyage by sea which he is to undertake by our command, exempting them from all hindrance or inconvenience, either in their persons or goods, and we declare them

privileged from arrest or detention on account of any offense or crime which may have been committed by them up to the date of this instrument and during the time they may be upon the voyage, and for two months after they return to their homes.

And we hereby command you, all and each one, in your several districts and jurisdictions, that you abstain from trying any criminal cause touching the person of the crews under the command of the said Christopher Columbus during the time above specified, it being our will and pleasure that every matter of this sort remain suspended. This order is to be complied with as you value our favor, and under a penalty of ten thousand maravedis for any infringement of the same.

And we hereby furthermore command every public notary who shall be applied to for any purpose connected with the above-mentioned mandate, that he furnish all the proper signed attestations which are necessary in the case, in order that we may be assured of the due performance of our orders.

Given in our city of Granada on the thirtieth day of April, in the year of our Saviour Jesus Christ, one thousand four hundred and ninety-two.

I, THE KING.
I, THE QUEEN.
JUAN DE COLOMA, *Secretary.*

Executed in due form.
RODERICUS, *Doctor.*
FRANCISCO DE MADRID, *Chancellor.*

XXXIII.

LETTER OF COLUMBUS TO LUIS SANTANGEL, GIVING AN ACCOUNT OF HIS FIRST VOYAGE AND THE DISCOVERY OF THE NEW WORLD. SENT OVERLAND FROM LISBON, FEBRUARY, 1493, AND PUBLISHED IN MARCH, 1493.

[Original probably destroyed by printer.]

SIR: As I am sure you will be pleased at the great victory which the Lord has given me in my voyage, I write this to inform you that in twenty days I arrived in the Indies with the squadron which Their Majesties had placed under my command. There I discovered many islands inhabited by a numerous population, and took possession of them for Their Highnesses, with public ceremony and the royal flag displayed, without molestation.

The first that I discovered I named San Salvador, in remembrance of that Almighty Power which had so miraculously bestowed them. The Indians call it Guanahani. To the second I assigned the name of Santa Marie de Concepcion; to the third that of Fernandina; to the fourth that of Isabella; to the fifth Juana, and so on, to every one a new name.

When I arrived at Juana I followed the coast to the westward, and found it so extensive that I considered it must be a continent and a province of Cathay. And as I found no towns or villages by the seaside, excepting some small settlements, with the people of which I could not communicate because they all ran away, I continued my course to the westward, thinking I should not fail to find some large towns and cities. After having coasted many leagues without finding any signs of them, and seeing that the coast took me to the northward, where I did not wish to go, as the winter was already set in, I considered it best to follow the coast to the south; and the wind being also scant I determined to lose no more time and therefore returned to a certain port, from whence I sent two messengers into the country to ascertain whether there was any king there or any large city.

They traveled for three days, finding an infinite number of small settlements and an innumerable population, but nothing like a city, on which account they returned. I had tolerably well ascertained from some Indians whom I had taken that this land was only an island, so I followed the coast of it to the east 107 leagues to its termination. And about eighteen leagues from this cape, to the east, there was another island, to which I shortly gave the name of Espanola. I went to it, and followed the north coast of it, as I had done that of Juana, for 178 long leagues due east.

This island is very fertile, as well, indeed, as all the rest. It possesses numerous harbors, far superior to any I know in Europe, and what is remarkable, plenty of large inlets. The land is high, and contains many lofty ridges and some very high mountains, without comparison of the Island of Cetrefrey, all of them very handsome and of different forms; all of them accessible and abounding in trees of a thousand kinds, high, and appearing as if they would reach the skies. And I am assured that the latter never lose their fresh foliage, as far as I can understand, for I saw them as fresh and flourishing as those of Spain in the month of May. Some were in blossom,

some bearing fruit, and others in other states according to their nature.

The nightingale and a thousand kinds of birds enlivened the woods with their song (in the month of November) wherever I went. There are seven or eight kinds of palms of various elegant forms, besides various other trees, fruits, and herbs. The pines of this island are magnificent. It has also extensive plains, honey, and a great variety of birds and fruits. It has many metal mines, and a population innumerable.

Espanola is a wonderful island, with mountains, groves, plains, and the country generally beautiful and rich for planting and sowing, for rearing sheep and cattle of all kinds, and ready for towns and cities. The harbors must be seen to be appreciated; rivers are plentiful and large and of excellent water; the greater part of them contain gold. There is a great difference between the trees, fruits, and herbs of this island and those of Juana. In this island there are many spices, and large mines of gold and other metals.

The people of this island and all of the others which I have discovered or heard of, both men and women, go naked as they were born, although some of the women wear leaves of herbs or a cotton covering made on purpose. They have no iron or steel, nor any weapons; not that they are not a well-disposed people and of fine stature, but they are timid to a degree. They have no other arms excepting spears made of cane, to which they fix at the end a sharp piece of wood, and then dare not use even these. Frequently I had occasion to send two or three of my men on shore to some settlement for information, where there would be multitudes of them; and as soon as they saw our people they would run away every soul, the father leaving his child; and this was not because any one had done them harm (for rather at every cape where I had landed and been able to communicate with them I have made them presents of cloth and many other things without receiving anything in return), but because they are so timid. Certainly, where they have confidence and forget their fears they are so open-hearted and liberal with all they possess that it is scarcely to be believed without seeing it. If anything that they have is asked of them they never deny it; on the contrary, they will offer it. Their generosity is so great that they would give anything, whether it is costly or not, for anything of every kind that is offered them and be contented with it. I was obliged

to prevent such worthless things being given them as pieces of broken basins, broken glass, and bits of shoe latchets, although when they obtained them they esteemed them as if they had been the greatest of treasures. One of the seamen, for a latchet received a piece of gold weighing two dollars and a half, and others, for other things of much less value, obtained more. Again, for new silver coin they would give everything they possessed, whether it was worth two or three doubloons or one or two balls of cotton. Even for pieces of broken pipe-tubes they would take them and give anything for them, until, when I thought it wrong, I prevented it. And I made them presents of thousands of things which I had that I might win their esteem, and also that they might be made good Christians and be disposed to the service of Your Majesties and the whole Spanish nation, and help us to obtain the things which we require and of which there is abundance in their country.

And these people appear to have neither religion nor idolatry, except that they believe that good and evil come from the skies; and they firmly believed that our ships and their crews, with myself, came from the skies, and with this persuasion, after having lost their fears, they always received us. And yet this does not proceed from ignorance, for they are very ingenious and some of them navigate their seas in a wonderful manner and give good account of things, but because they never saw people dressed or ships like ours.

And as soon as I arrived in the Indies, at the first island at which I touched, I captured some of them that we might learn from them and obtain intelligence of what there was in those parts. And as soon as we understood each other they were of great service to us; but yet, from frequent conversation which I have had with them, they still believe we came from the skies. These were the first to express that idea, and others ran from house to house, and to the neighboring villages, crying out, "Come and see the people from the skies." And thus all of them, men and women, after they had satisfied themselves of their safety, came to us without reserve, great and small, bringing us something to eat and drink, and which they gave to us most affectionately.

They have many canoes in those islands propelled by oars, some of them large and others small, and many of them with eight or ten paddles of a side, not very wide, but all of one trunk, and a boat can not keep way with them by oars, for

they are incredibly fast; and with these they navigate all the islands, which are innumerable, and obtain their articles of traffic. I have seen some of these canoes with sixty or eighty men in them and each with a paddle.

Among the islands I did not find much diversity of formation in the people, nor in their customs, nor their language. They all understand each other, which is remarkable; and I trust Your Highnesses will determine on their being converted to our faith, for which they are very well disposed.

I have already said that I went 107 leagues along the coast of Juana, from east to west. Thus, according to my track, it is larger than England and Scotland together, for, besides these 107 leagues, there were further west two provinces to which I did not go, one of which is called Cibau, the people of which are born with tails; which provinces must be about fifty or sixty leagues long, according to what I can make out from the Indians I have with me, who know all the islands. The other island (Espanola) is larger in circuit than the whole of Spain, from the Straits of Gibraltar (the Columns) to Fuentarabia, in Biscay, as I sailed 138 long leagues in a direct line from west to east. Once known it must be desired, and once seen one desires never to leave it; and which, being taken possession of for Their Highnesses, and the people being at present in a condition lower than I can possibly describe, the sovereigns of Castile may dispose of it in any manner they please in the most convenient places. In this Espanola, and the best district, there are gold mines, and, on the other hand, from thence to terra firma, as well as from then to the Great Khan, where everything is on a splendid scale. I have taken possession of a large town, to which I gave the name of La Navidad, and have built a fort in it in every respect complete. And I have left sufficient people in it to take care of it, with artillery and provisions for more than a year, also a boat and coxswain, with the equipments, in complete friendship with the king of the island to that degree that he delighted to call me and look on me as his brother. And should they fall out with these people, neither he nor his subjects know anything of weapons, and go naked, as I have said, and they are the most timorous people in the world. The few people left there are sufficient to conquer the country, and the island would thus remain without danger to them, they keeping order among themselves.

In all these islands, it appeared to me, the men are contented with one wife, but to their governor or king they allow twenty. The women seem to work more than the men. I have not been able to discover whether they respect personal property, for it appeared to me things were common to all, especially in the particular of provisions. Hitherto I have not seen in any of these islands any monsters, as there were supposed to be. The people, on the contrary, are generally well formed, nor are they black like those of Guinea, saving their hair, and they do not reside in places exposed to the sun's rays. It is true that the sun is most powerful there, as it is only twenty-six degrees from the equator. In this last winter those islands which were mountainous were cold, but they were accustomed to it, with good food, and plenty of spices and hot nutriment. Thus I have found no monsters nor heard of any, except at an island which is the second in going to the Indies, and which is inhabited by a people who are considered in all the islands as ferocious, and who devour human flesh. These people have many canoes, which scour all the islands of India, and plunder all they can. They are not worse formed than others, but they wear the hair long like women, and use bows and arrows of the same kind of cane, pointed with a piece of hard wood instead of iron, of which they have none. They are fierce compared with the other people, who are in general but sad cowards; but I do not consider them in any other way superior to them. These are they who trade in women, who inhabit the first island met with in going from Spain to the Indies, in which there are no men whatever. They have no effeminate exercise, but bows and arrows, as before said, of cane, with which they arm themselves, and use shields of copper, of which they have plenty.

There is another island, I am told, larger than Espanola, the natives of which have no hair. In this there is gold without limit, and of this and the others I have Indians with me to witness.

In conclusion, referring only to what has been effected by this voyage, which was made with so much haste, Your Highnesses may see that I shall find as much gold as desired with the very little assistance afforded to me; there is as much spice and cotton as can be wished for; and also gum, which hitherto has only been found in Greece, in the island of Chiso, and they may sell it as they please, and the mastich, as much

as may be desired, and slaves, also, who will be idolators. And I believe that I have rhubarb, and cinnamon, and a thousand other things I shall find, which will have been discovered by those whom I have left behind, for I did not stop at any cape when the wind enabled me to navigate, except at the town of Navidad, where I was very safe and well taken care of. And in truth much more I should have done if the ships had served me as might have been expected. This is certain, that the Eternal God our Lord gives all things to those who obey Him, and the victory when it seems impossible, and this evidently is an instance of it, for although people have talked of these lands, all was conjecture unless proved by seeing them, for the greater part listened and judged more by hearsay than by anything else.

Since, then, our Redeemer has given this victory to our illustrious King and Queen, and celebrated their reigns by such a great thing, all Christendom should rejoice and make great festivals, and give solemn thanks to the Blessed Trinity, with solemn praises for the exaltation of so much people to our holy faith; and next for the temporal blessings, which not only Spain but they will enjoy in becoming Christians, and which last may shortly be accomplished.

Written in the caravel off the Canary Islands on the fifteenth of February, ninety-three.

The following is introduced into the letter after being closed:

After writing the above, being in the Castilian Sea (off the coast of Castile), I experienced so severe a wind from south and southeast that I have been obliged to run to-day into this port of Lisbon, and only by a miracle got safely in, from whence I intended to write to Your Highnesses. In all parts of the Indies I have found the weather like that of May, where I went in ninety-three days, and returned in seventy-eight, saving these thirteen days of bad weather that I have been detained beating about in this sea. Every seaman here says that never was so severe a winter nor such loss of ships.

XXXIV.

THE WILL OF CHRISTOPHER COLUMBUS.

[Certified copy in the collection of the Duke of Veragua, Madrid.—Translation.]

†

In the name of the Most Holy Trinity, who inspired me with the idea and afterward made it perfectly clear to me, that I could navigate and go to the Indies from Spain, by traversing the ocean westwardly; which I communicated to the King, Don Ferdinand, and to the Queen, Doña Isabella, our Sovereigns; and they were pleased to furnish me the necessary equipment of men and ships, and to make me their Admiral over the said ocean, in all parts lying to the west of an imaginary line, drawn from pole to pole, a hundred leagues west of the Cape de Verde and Azore Islands; also appointing me their Viceroy and Governor over all continents and islands that I might discover beyond the said line westwardly; with the right of being succeeded in the said offices by my eldest son and his heirs forever, and a grant of the tenth part of all things found in the said jurisdiction; and of all rents and revenues arising from it; and the eighth of all the lands and everything else, together with the salary corresponding to my rank of Admiral, Viceroy and Governor, and all other emoluments accruing thereto, as is more fully expressed in the title and agreement sanctioned by Their Highnesses.

And it pleased the Lord Almighty that in the year one thousand four hundred and ninety-two, I should discover the continent of the Indies and many islands, among them Espanola, which the Indians call Ayte and the Menicongos, Cipango. I then returned to Castile to Their Highnesses, who approved of my undertaking a second enterprise for further discoveries and settlements, and the Lord gave me victory over the Island of Espanola, which extends six hundred leagues, and I conquered it and made it tributary; and I discovered many islands inhabited by cannibals, and seven hundred to the west of Espanola, among which is Jamaica, which we call Santiago; and three hundred and thirty-three leagues of continent from south to west, besides a hundred and seven to the north, which I discovered in my first voyage; together with many islands, as may more clearly be seen by my letters, memorials and maritime charts. And as we hope in God that before long a

good and great revenue will be derived from the above islands and continent, of which, for the reasons aforesaid, belong to me the tenth and the eighth, with the salaries and emoluments specified above; and considering that we are mortal, and that it is proper for every one to settle his affairs, and to leave declared to his heirs and successors the property he possesses or may have a right to: Wherefore, I have concluded to create an entailed estate (mayorazgo) out of the said eighth of the lands, places and revenues, in the manner which I now proceed to state:

In the first place I am to be succeeded by Don Diego, my son, who, in case of death without children, is to be succeeded by my other son, Ferdinand; and should God dispose of him also without leaving children and without my having any other son, then my brother, Don Bartholomew, is to succeed; and after him his eldest son; and if God should dispose of him without heirs, he shall be succeeded by his sons from one to another forever; or, in the failure of a son, to be succeeded by Don Ferdinand, after the same manner, from son to son, successively; or in their place by my brothers, Bartholomew and Diego. And should it please the Lord that the estate, after having continued some time in the line of any of the above successors, should stand in need of an immediate and lawful male heir, the succession shall then devolve to the nearest relation, being a man of legitimate birth and bearing the name of Columbus derived from his father and his ancestors. This entailed estate shall in nowise be inherited by a woman, except in case that no male is to be found, either in this or any other quarter of the world, of my real lineage, whose name, as well as that of his ancestors, shall have always been Columbus. In such an event (which may God forefend), then the female of legitimate birth most nearly related to the preceding possessor of the estate shall succeed to it; and this is to be under the conditions herein stipulated at foot, which must be understood to extend as well to Don Diego, my son, as to the aforesaid and their heirs, every one of them, to be fulfilled by them; and failing to do so they are to be deprived of the succession for not having complied with what shall herein be expressed; and the estate to pass to the person most nearly related to the one who held the right; and the person thus succeeding shall in like manner forfeit the estate, should he also fail to comply with said conditions; and another person, the nearest of my lineage,

shall succeed, provided he abide by them, so that they may be observed in the form prescribed. This forfeiture is not to be incurred for trifling matters, originating in lawsuits, but in important cases, when the glory of God, or my own, or that of my family may be concerned, which supposes a perfect fulfillment of all the things hereby ordained; all which I recommend to the Courts of Justice. And I supplicate His Holiness, who now is, and those who may succeed to the holy church, that if it should happen that this, my will and testament, has need of his holy order and command for its fulfillment, that such order be issued in virtue of obedience and under penalty of excommunication, and that it shall not be in any wise disfigured. And I also pray the King and Queen, our Sovereigns, and their eldest born, Prince Don Juan, our lord, and their successors, for the sake of the services I have done them, and because it is just, and that it may please them not to permit this, my will and constitution of my entailed estate, to be any way altered, but to leave it in the form and manner which I have ordained forever, for the greater glory of the Almighty, and that it may be the root and basis of my lineage, and a memento of the services I have rendered Their Highnesses; that, being born in Genoa, I came over to serve them in Castile and discovered to the west of terra firma the Indies and islands before mentioned. I accordingly pray Their Highnesses to order that this, my privilege and testament, be held valid and be executed summarily, and without any opposition or demur, according to the letter. I also pray the grandees of the realm and the lords of the council, and all others having administration of justice to be pleased not to suffer this, my will and testament, to be of no avail, but to cause it to be fulfilled as by me ordained; it being just that a noble, who has served the King and Queen and the kingdom, should be respected in the disposition of his estate by will, testament, institution of entail or inheritance, and htat the same be not infringed either in whole or in part.

In the first place, my son, Don Diego, and all my successors and descendants, as well as my brothers, Bartholomew and Diego, shall bear my arms, such as I shall leave them after my days, without inserting anything else in them; and they shall be their seal to seal with all. Don Diego, my son, or any other who may inherit this estate, on coming in possession of the inheritance, shall sign with the signature which I now make use of, which is an X with an S over it, and an M with a Roman

A over it, and over that an S, and then a Greek Y, with an S over it, with its lines and points as is my custom, as may be seen by my signatures, of which there are many, and it will be seen by the present one.

He shall only write "The Admiral," whatever other titles the King may have conferred on him. This is to be understood as respects his signature, but not the enumeration of his titles, which he can make at full length if agreeable, only the signature is to be "The Admiral."

The said Don Diego, or any other inheritor of this estate, shall possess my offices of the Admiral of the Ocean, which is to the west of an imaginary line, which His Highness ordered to be drawn, running from pole to pole a hundred leagues beyond the Azores, and as many more beyond the Cape de Verde Islands, over all of which I was made by their order, their Admiral of the Sea, with all the pre-eminences held by Don Henrique in the Admiralty of Castile; and they made me their Governor, and Viceroy perpetually and forever, over all the islands and mainlands discovered, or to be discovered, for myself and heirs, as is more fully shown by my treaty and privilege as above mentioned.

Item. The said Don Diego, or any other inheritor of this estate, shall distribute the revenue which it may please our lord to grant him, in the following manner, under the above penalty.

First. Of the whole income of this estate, now and at all times, and of whatever may be had or collected from it, he shall give the fourth part of it to my brother, Don Bartholomew Columbus, adelantado of the Indies; and this is to continue until he shall have acquired an income of a million of maravedises[1] for his support, and for the services he has rendered and will continue to render to this entailed estate; which million he is to receive, as stated, every year, if the said fourth amount to so much, and that he have nothing else; but if he possesses a part or the whole of that amount in rents, that henceforth he shall not enjoy the said million, nor any part of it, except that he shall have in the fourth year part unto the said quantity of a million, if it should amount to so much; and as much as he shall have a revenue besides this fourth part, whatever sum of maravedises of known rent from

[1] Approximately $3,500.

property or perpetual offices, the said quantity of rent or revenue from property or offices shall be discontinued; and from said million shall be reserved whatever marriage portion he may receive with any female he may acquire or may have over and above his wife's dowery; and when it shall please God that he or his heirs and descendants shall derive from their property and offices a revenue of a million arising from rents, neither he nor his heirs shall enjoy any longer anything from the said fourth part of the entailed estate which shall remain with Don Diego, or whoever may inherit.

Item. From the revenues of the said estate, or from any fourth part of it (should its amount be adequate to it), shall be paid every year to my son Ferdinand two millions, till such time as his revenue shall amount to two millions, in the same form and manner as in the case of Bartholomew, who, as well as his heirs, are to have the million or the part that may be wanting.

Item. The said Don Diego or Don Bartholomew shall make out of the said estate, for my brother Diego, such provisions as may enable him to live decently, as he is my brother, to whom I assign no particular sum, as he has attached himself to the church, and that will be given him which is right; and this is to be given him in a mass, and before anything shall have been received by Ferdinand, my son, or Bartholomew, my brother, or their heirs; and also according to the amount of the income of the estate. And in case of discord, the case is to be referred to two of our relations, or other men of honor; and should they disagree among themselves, they will choose a third person as arbitrator, being virtuous and not distrusted by either party.

Item. All this revenue which I bequeath to Bartholomew, to Ferdinand, and to Diego, shall be delivered to and received by them as prescribed under the obligation of being faithful and loyal to Diego, my son, or his heirs, they as well as their children; and should it appear that they, or any of them, had proceeded against him in anything touching his honor, or the prosperity of the family or of the estate either in word or deed, whereby might come a scandal and debasement to my family, and a detriment to my estate in that case, nothing farther shall be given to them or his from that time forward, inasmuch as they are always to be faithful to Diego and his successors.

Item. As it was my intention, when I first instituted this entailed estate, to dispose, or that my son Diego should dispose for me, of the tenth part of the income in favor of the necessitous persons, as a tithe, and in commemoration of the Almighty, and Eternal God; and persisting still in this opinion, and hoping that His High Majesty will assist me, and those who may inherit it, in this or the New World, I have resolved that the said tithe shall be paid in the manner following:

First. It is to be understood that the fourth part of the revenue of the estate which I have ordained and directed to be given to Don Bartholomew, until he have an income of one million, includes the tenth of the whole revenue of the estate; and that, as in proportion as the income of my brother Don Bartholomew shall increase, as it has to be discounted from the revenue of the fourth part of the entailed estate, that the said revenue shall be calculated, to know how much the tenth part amounts to; and the part which exceeds what is necessary to make up the million for Don Bartholomew shall be received by each of my family as may most stand in need of it, discounting it from the said tenth, if their income do not amount to the fifty thousand maravedises; and should any of these come to have an income to this amount, such a part shall be awarded to them as two persons, chosen for the purpose, may determine along with Don Diego or his heirs. Thus, it is to be understood that the million which I leave to Bartholomew comprehends the tenth of the whole revenue of the estate; which revenue is to be distributed among my nearest and most needy relations in the manner I have directed; and when Don Bartholomew has an income of one million, and that nothing more shall be due to him on account of said fourth part, then Don Diego, my son, or the persons which I shall herein point out, shall inspect the accounts and so direct that the tenth of the revenue shall still continue to be paid to the most necessitous members of my family that may be found in this or any other quarter of the world, who shall diligently be sought out; and they are to be paid out of the fourth part from which Don Bartholomew is to derive his million, which sums are to be taken into account, and deducted from the said tenth, which, should it amount to more, the overplus, as it arises from the fourth part, shall be given to the most necessitous persons as aforesaid; and should it not be sufficient, that Don Bartholomew shall have it until his own estate goes on increasing, leaving the said million in part or in the whole.

Item. The said Don Diego, my son, or whoever may be the inheritor, shall appoint two persons of conscience and authority, and most nearly related to the family who are to examine the revenue and its amount carefully, and to cause the tenth to be paid out of the fourth from which Don Bartholomew is to receive his million to his most necessitous members of my family who may be found here or elsewhere, whom they shall look for diligently upon their consciences; and as it might happen that said Don Diego or others after him, for reasons which may concern their own welfare, or the credit or support of the estate, may be unwilling to make known the full amount of the income, nevertheless I charge him on his conscience to pay the sum aforesaid and charge them on their souls and consciences not to denounce or make it known, except with the consent of Don Diego, or the person that may succeed him, but let the above tithe be paid in the manner I have directed.

Item. In order to avoid all disputes in the choice of the two nearest relations who are to act with Don Diego or his heirs, I hereby elect Don Bartholomew, my brother, for one, and Don Fernando, my son, for the other; and when these two shall enter upon the business they shall choose two other persons among the most trusty, and most nearly related, and these again shall elect two others, when it shall be question of commencing the examination; and thus it shall be managed with diligence from one to the other, as well in this as in the other of government, for the service and glory of God, and the benefit of the said entailed estate.

Item. I also enjoin Diego, or any one that may inherit the estate, to have and maintain in the city of Genoa one person of our lineage to reside there with his wife, and appoint him a sufficient revenue to enable him to live decently, as a person closely connected with the family, of which he is to be the root and basis in that city; from which great good may accrue to him, inasmuch as I was born there, and came from them thence.

Item. The said Don Diego, or whoever shall inherit the estate, must remit in bills, or in any other way, all such sums as he may be able to save out of the revenue of the estate, and direct purchases to be made in his name, or that of his heirs, in a fund in the Bank of St. George,[1] which gives an interest

[1] The great financial corporation of Genoa.

of six per cent. and is secure money; and this shall be devoted to the purpose I am about to explain.

Item. As it becomes every man of rank and property to serve God, either personally or by means of his wealth, and as all moneys deposited with St. George are quite safe, and Genoa is a noble city and powerful by the sea, and as at the same time that I undertook to set out upon that discovery of the Indies, it was with the intention of supplicating the King and Queen, our lords, that whatever moneys should be derived from the said Indies should be invested in the conquest of Jerusalem; and as I did so supplicate them; if they do this, it will be well; if not, at all events the said Diego, or such persons as may succeed him in this trust, to collect together all the money he can, and accompany the King, our lord, should he go to the conquest of Jerusalem, or else go there himself with all the force he can command; and in pursuing this intention, it will please the Lord to assist toward the accomplishment of the plan; and should he not be able to effect the conquest of the whole, no doubt he will achieve in part. Let him therefore collect and make a fund of all his wealth in St. George in Genoa, and let it multiply there until such time as it may appear to him that something of consequence may be effected as respects the project on Jerusalem; for I believe that when Their Highnesses shall see that this is contemplated, they will wish to realize it themselves, or will afford him, as their servant and vassal the means of doing it for them.

Item. I charge my son Diego and my descendants, especially whoever may inherit this estate, which consists, as aforesaid, of the tenth of whatsoever may be had or found in the Indies, and the eighth part of the lands and rents, all which, together with my rights and emoluments as Admiral, Viceroy and Governor, amount to more than twenty-five per cent., I say, that I require of him to employ all this revenue, as well as his person, and all the means in his power, in well and faithfully serving and supporting Their Highnesses, or their successors, even to the loss of life and property; since it was Their Highnesses, next to God, who first gave the means of getting and achieving this property, although, it is true, I came over these realms to invite them to the enterprise, and that a long time elapsed before any provision was made for carrying it into execution; which, however, is not surprising, as this was an undertaking of which all the world was ignorant, and no one

had any faith in it; wherefore, I am by so much more indebted to them, as well as because they have since also much favored and promoted me.

Item. I also require of Diego, or whosoever may be in possession of the estate, that in the case of any schism taking place in the church of God, or that any person of whatever class or condition should attempt to despoil it of its property and honors they hasten to offer at the feet of His Holiness, that is, if they are not heretics (which God forbid), their persons, power and wealth, for the purpose of suppressing such schism, and preventing any spoliation of the honor and property of the church.

Item. I command the said Diego, or whoever may possess the said estate, to labor and strive for the honor, welfare and aggrandizement of the city of Genoa, and to make use of all his power and means in defending and enhancing the good and credit of that republic, in all things not contrary to the service of the church of God, or the high dignity of the King and Queen, our lords and their successors.

Item. The said Diego, or whoever may possess or succeed to the estate, out of the fourth part of the whole revenue, from which, as aforesaid, is to be taken a tenth, when Don Bartholomew or his heirs shall have saved the two millions, or part of them, and when the time shall come of making a distribution among our relations, shall apply and invest the said tenth in providing marriages for such daughters of our lineage as may require it, and in doing all the good in their power.

Item. When a suitable time shall arrive, he shall order a church to be built in the island of Espanola, and in the most convenient spot, to be called Santa Maria de la Concepcion; to which is to be annexed an hospital, upon the best possible plan, like those of Italy and Castile, and a chapel be erected to say mass in for the good of my soul, and those of my ancestors and successors with great devotion, since no doubt it will please the Lord to give us a sufficient revenue for this and the afore-mentioned purposes.

Item. I also order Diego my son, or whosoever may inherit after him, to spare no pains in having and maintaining in the island of Espanola, four good professors in theology, to the end and aim of their studying and laboring to convert to our holy faith the inhabitants of the Indies; and in proportion as

by God's will the revenue of the estate shall increase in the same degree shall the number of teachers and devout persons increase, who are to strive to make Christians of the natives; in attaining which no expense should be thought too great. And in commemoration of all that I hereby ordain, and of the foregoing, a monument of marble shall be erected in the said church of La Concepción, in the most conspicuous place, to serve as a record of what I here enjoin on the said Diego, as well as to other persons who may look upon it; which marble shall contain an inscription to the same effect.

Item. I also require of Diego, my son, and whosoever may succeed him in the estate, that every time, and as often as he confesses, he first show his obligation, or a copy of it, to the confessor, praying him to read it through, that he may be enabled to inquire respecting its fulfillment; from which will redound great good and happiness to his soul.

S.
S. A. S.
X. M. Y.
EL ALMIRANTE.

XXV.—MOUNTAINS AND HISTORY.

By Prof. EDMUND KIMBALL ALDEN.

Near the present Hotel Gibbon, in Lausanne, the historian of the "Decline and Fall" sat in his garden and put the finishing touches on his monumental work. His laboratory was almost within sight of the summit of Mont Blanc, and as he completed the story Balmat and De Saussure were making the first ascents of the monarch of mountains. De Saussure was the pioneer of the Tyndalls, Whympers, and Alpinists of to-day. The rage for climbing, a passion almost unknown to our ancestors three generations removed, has led to many vagaries, to many conquests of difficult summits for the honor of a "première ascension," but it has thrown a flood of light on the mountains, primarily of central Europe, and then of the world, and it has added to the thoroughness and grasp of the school so worthily represented by Gibbon the freshness and illumination that come from outdoor life.

Orography, indeed, is the most attractive branch of topography. No thesis is needed to prove the increasing importance of the latter subject. So rich is its part in the modern historic field that we are inclined to forget its little prominence in the earlier study of history. Says a late essayist,[1] "Hume hardly notices a single fact with regard to the physical geography of England between the Roman invasion and the rebellion of 1688." So far was this neglect of environment carried that, to quote from the same writer, not a few histories "might have been read almost as profitably without a map as with one." Taine, Buckle, and Draper may have pushed to excess the correlation of man and nature. The eye of the thoughtful topographer interpenetrating the work of the trained historian is seen in the writings—so widely differ-

[1] Edward T. Vaughan, in Contemp. Rev., V., 229.

ing—of Green, Merivale, Curtius, and Duruy. A good recent instance is the illumination cast on the familiar pages of ancient Greek history by the keen-eyed Mahaffy, a service gratefully acknowledged by Freeman in his last contribution, "Studies of Travel."

The wide subject of the relation of topography to history has never yet been adequately handled. Even a slight sketch of the field would be out of place on this platform, but an idea of the matter may be gained by confining one's thoughts to the branch of the topic the most fascinating of all—mountains. Let us glance at the elements of their value and influence, premising our brief survey with a concise enumeration of the peaks and ranges which have entered most conspicuously into man's history.

The long, low system of the Appalachians has been the most momentous on this continent, as a whole, and through such parts as the Highlands, the Green Mountains, and the Virginian Blue Ridge. Of far greater altitude and extent, but not of greater import, are the North American Cordilleras, the Sierra Nevada, and the Andes. In the British Islands the historic groups are the Welsh Highlands, the Pennine Chain, the uplands of southwestern England, the Cheviots, and those confused knots that lie westward and make up the district anomalously called the Scottish Lowlands, the Grampians, and Highlands generally. On the Continent the number is bewildering, but the leaders from our point of view are the members of the central vertebra, mountains of Asturias, Pyrenees, Cevennes, Jura, Alps, Balkans; then the Vosges, Black Forest, Thuringian, and Sudetic Mountains, Carpathians, Scandinavian system, Apennines, Scardus, Pindus, and the infinite ramifications of the Greek peninsulas and islands.

The Dark Continent has many isolated peaks and extended chains, but towering Ruwenzori and Kilima-Njaro need not detain us. The Drakenberge and other ranges of south Africa are of some importance, as are the Abyssinian Highlands and the Atlas. But Asia will attract us with its mighty masses, preeminent in height and extent, and not without absorbing human interests—Caucasus, Taurus, Elbruz, the Himalayas (rightly named the abode of snow), Kuen-Lun, Thian-Shan, Hindu-Kush, Altai, Zagros, Lebanon, and Sinai. And lastly we can draw for illustrations on such less familiar regions as the mountain lands of Japan and New Zealand and the islands of the sea.

The value of mountains is dependent on their structure, height, average height, width, length, relation to lowlands and to the coast, direction, and grouping. Their influence is seen in the natural resources which they furnish to man, in their modifications of climate, in their action as barriers, as conservators of the past, as aids in the development of freedom, as powerful stimulants of the imagination.

The structure of mountains, of vital interest to geologists, is of far less importance to the historian. If he were concerned with eons instead of centuries, then problems of limestone and gneiss, of upheavals and faults, might be of the utmost moment. But as long as ranges and peaks of vastly dissimilar origin apparently play substantially the same part in human economy, he must be content to touch but briefly on this branch of the subject. Yet even in this line we may indicate the field of inquiry by pointing out the relations of formation to mineral supply, to position near the coast line or in the interior. Most suggestive for their light on prehistoric man are those maps which show areas like the Jurassic and Triassic seas of central Europe.

Of vaster import is the height, relative and absolute. Among the historic systems there stands forth preeminent for towering altitudes the Alps, Caucasus, Cordilleras of North and South America, and the vertebral mass of Asia which culminates in the Himalayas. All these ascend far into the region of perpetual snow. The two first and the last have been of the greatest importance in the history of the race. Obvious as is in many respects the superiority of a range of 15,000 feet over a range of 5,000 feet, mere size should not delude us into sweeping generalizations. Olympus and Etna, the giants of India, and the Bernese Oberland should not dwarf Parnes and the Grampians, the Ardennes and the Alleghanies.

The average height is of equal, perhaps of greater, value. And here is conspicuous the striking contrast between the Alps and the Pyrenees, the Alps and the Caucasus. From the times of Gallic invasion in the fifth century, before our era, the Alps furnished no real barrier to invaders. Not a few of our frequented passes, like the Mont Genèvre, Little St. Bernard, Splügen, and Brenner, were in use in the Roman Empire. So numerous were the ways by which a considerable body of men might penetrate into Piedmont that the route of the Hannibalic passage was already a mooted question in classical

times, and no less than 335 memoirs have been written up to date to prove their writers' hypotheses. Not only do passes abound in the Alps, but they are of comparatively low elevation. The ratio of the height of the Alpine cols to the neighboring crests is about one half, far less than in the Pyrenees or in the Himalayas. Not tourists alone, nor skirmishing parties, nor stragglers in the van or rear guard of wandering nations, have poured through the defiles of the Alps. Entire peoples, like the Goths, under Theodoric, who threaded the routes of the Julian Alps; like the Cimbri, who slid down the Brenner Pass in Tyrol; armies of Charlemagne, of Frederick Barbarossa, of Francis I, whose forcing of the Cottian Alps was a prelude to his victory at Marignano; of Suvaroff, in 1799, in the St. Gothard and Panixer passes; of Macdonald, the next year, in the Splügen; of Napoleon himself in the Col di Tenda, Simplon, and Great St. Bernard. But in the Pyrenees not a wagon road breaks for 180 miles the uniform barrier. So even is the height that the average altitude surpasses that of the Alps, although Maladetta falls thousands of feet below Monte Rosa and the Matterhorn. Only at the extremities could the invaders of Spain debouch into the country. And hardly less striking in this regard are the Caucasus, Himalayas, and systems of Central Asia. The Dariel Pass, at the foot of Kasbek, the legendary scene of the suffering of Prometheus, is the only good road for a distance of 600 miles in the formidable stretch of the Caucasus. Mr. Bryce, in his Transcaucasia and Ararat, calls special attention to the stranded remnants of peoples preserved for centuries among the mazes of these mountains. The frightful defiles that give a precarious entry into northern India through the Karakorum Range and the western Himalayas lie at elevations of 12,000, 15,000, 18,000 feet. The Karakorum Pass is the best and most frequented means of access from eastern Turkestan into Cashmere and thence into India; yet Lord Dunmore (in 1892) was one of the very few Europeans who have effected its passage. The bones of hundreds of travelers and of countless beasts of burden line the main routes in the western Himalayas. As for the eastern Himalayas,[1] they have been hitherto absolutely impenetrable, except to solitary smugglers and herdsmen. Considerations like these reveal to us the wonderful significance of these stupendous uniform barriers.

[1] Hunter, India.

The fascinating subject of mountain passes is strongly tempting to the essayist on orography. There is no reason why makers of guidebooks and officers of the general staff should regard passes as their peculiar province. Consider attentively the location of the chief breaks in the Vosges, Jura, Black Forest, Balkans, mountains of Greece, nay, even of the Pennine Range and the Appalachians, and observe how this knowledge affects our understanding of European and American history. Several decades ago the question of the Cumberland road was one of the foremost under discussion. Why? Low as were the northern Appalachians, the Cumberland road marked in those days the main practicable route across the system. Again, one reads the story of the border Franco-German warfare of the last three centuries and fails to comprehend the account without a knowledge of the value of the trouée of Belfort and the Col de Saverne in the Vosges. The reader flounders through pages of Greek and Roman history, guided by uncertain lights; then perhaps the surpassing importance of, let us say the Scardus Range, dawns upon him through the discovery of the fact that this chain possessed in ancient and modern times alike only two[1] available passes, and straightway movements of Brutus or Pompey, intrigues of this or that politician, assume a new meaning and interest.

In Asiatic history the depressions are of possibly yet greater instructiveness. The life of Oriental antiquity centered for long periods in the Euphrato-Tigris Valley. East of this rises a wall, the Zagros Mountains, crossed about the thirty-seventh parallel of latitude by the Keli-Shin Pass, which was accordingly the great Assyrian trade route to the Far East.[2] As for the Hindu-Kush and the other strategic ranges, one may say that nothing affords such an insight into the intricacies of oriental history as the study of the Khyber Pass from Kabul into the Panjab or of the Bolan Pass from Kandahar into Sind and the immemorial routes across the Pamirs and Turkestan.

The comparative width of the range is of considerable moment. A narrow and lofty chain might affect the climate and serve as a barrier. A broad mass of mountainous country necessarily develops a mountain life, with important results of characteristics, language, race, and history. It is not perhaps easy to draw the line of distinction between a broadly moun-

[1] Tozer, Turkey, I, 350.

[2] Rawlinson, Monarchies, I, 553.

tainous and a plateau country; high authority assigns greater import to the latter than to the former. Waiving doubtful cases, we will recur to familiar instances. Notice how the numerous ranges and complicated valleys of the Alps have led to the preservation of various races and dialects, to the development of nationalities like the Swiss and the Tyrolese, to a diversified and intricate history. A narrative of the Alpine peoples would be next to impossible; there would be no unity to the subject. On the other hand, compare narrower systems, like the Jura and the Sudetic mountains and the northern and middle Carpathians, and the history is seen to be less complex.

The effects of the great length of mountain systems are obvious: they present extended barriers to the winds, they turn back in discouragement hordes of primitive wanderers. The lofty masses already cited may serve as examples, to which we may add the Appalachians.

Further to be noted is the element of the bases. Do the mountains spring from lowlands or from plateaus? One can hardly doubt that the fertile plains of the foot of the Alps had much to do with the constant passing and repassing of these heights. The Kuen-Lun and Thian-Shan mountains probably equal the Himalayas in altitude and compare with them in other respects, but they rise from the high plateaus of Tartary and Thibet, while the latter ascend steeply from the extensive low plains of the Ganges and Indus. There are numerous peaks and chains in Asia Minor whose names are little known and whose historical interest is slight; they are interspersed in the irregularities of the great Anatolian plateau.

Closely connected with this branch of the subject is the grouping of mountains. Isolated summits—Etna, Vesuvius, Egmont, Teneriffe—are indeed of great sentimental interest, but they can not be compared in importance with chains. It was manifestly significant for the development of America that the chief systems run parallel with the coast line and not greatly removed from it. The thoughtful observer can trace similar instances in Europe where the proximity of mountains to the sea has modified the local history. The little ranges of Parnes and Cithæron are so placed as to protect Attica and foster its independent development. In fact, the whole political history of Greece can be advantageously studied in the grouping of such mountains as Taÿgetus, Œta, Pindus, and Olympus. A longitudinal Alpine valley becomes a separate

community. Compare Valais and the Grisons. Range behind range lie the isolated Sierra Nevada, Sierra Morena, Guadalarama, Montes de Toledo, and other storied hills of Spain, but they form no effective line of defense. France is open to invasion on the northeastern frontier. Northern Germany is marked out by nature for the ravage of war and the movements of peoples; the Harz, mountains of the Rhine and the Weser, and Thüringerwald, can not stay the conquerer. Ireland is exposed to the invader. The Scottish lowlands are not imposing, but their central mass can check an English army. The highlands of York and Derby are so situated as to affect the climate of eastern and western England, the former section being colder in spring than the latter.

Highly significant again is the direction of the axis with reference to the masses of land. The Apennines, vertebra of Italy, outline at once for us the political geography of the peninsula. Russia has its extended mountains, but they are far distant from the coast and do not hinder the evolution of a vast empire. The Appalachians stretch for hundreds of miles at a comparatively low elevation and at an approximately uniform distance from the coast. Their position is the key to colonial history, and no less the key to a clear understanding of operations in our civil war. And equally profound in its bearings is the direction of the axis, whether northward and southward or eastward and westward. Witness the Andes and their effect on the climate of South America, and consequently on the development of that continent. Witness also the North American Cordilleras, and compare the rainfall east and west of that barrier. On the other hand, northern and southern Europe are roughly and, on the whole, not unscientifically divided by the Alps, Cévennes, Balkans, and eastward ranges. A few hours' journey over the crest of the Cévennes or down the St. Gothard emphasizes sharply the difference between the north and the south, but 500 miles of travel from northern to southern Russia does not sensibly remove one to new conditions.

It will be seen from the foregoing remarks that the effect of mountains as barriers, as modifiers of climate, as conservators of the past, is pronounced and easily to be recognized; and it is unnecessary to enlarge upon their services as storehouses of minerals and guardians of various natural resources. Their influence on freedom is a stock subject of oratory and poetry,

and the Highland Scotch, Tyrolese, Swiss, and highlanders generally are conventionally summoned to the bar as witnesses. Elisée Réclus observes that the common needs of mountaineers on such occasions as landslips, protracted winters, and in toil create independence; but the remark is not conclusive. Without detracting from the virtues of highlanders, it may be said that these conventional generalizations must not be pushed too far. If the inhabitants of the Nile Delta and Euphrates Valley were subjected again and again, yet the doughty dwellers in the Dutch, Danish, and north German plains had no disreputable part in the struggle for freedom. If the champion of free institutions points to Appenzell, the Forest Cantons, Achaia, and Scotland, the historical student can refresh his memory with the Fen Country of England, the associated counties which supported Cromwell and Pym, and with the Lake and Mississippi regions of our own land.

More striking and incontestable is the wondrous effect on the imaginations of mankind in all ages. Call up the mysterious forms of Fuji-San in Japan, Lofeu in China, Adams Peak in Ceylon. Mount Meru in India was the seat of Aryan worship. Athos, Olympus, Ida, Parnassus, Helicon are time-honored instances in Hellas. Olympus, placed at the north-eastern extremity of Greece proper and its highest summit, is visible as far as Samothrace, 165 miles distant. Parnassus, the hub of Hellas, had a sentimental value to which Professor Bryce directed attention in one of his illuminating lectures in this country. As he well pointed out, the tourist, as he traverses Greece in various directions, rarely reaches a place whence a few hours' journey will not afford him a view of the familiar and awe-inspiring mountain. It is not too much to say that Parnassus, as a centripetal force to bind the Hellenes together, may be compared with pride of common games or common literature.

We pass now to the practical application of our theme. The term mountaineering does not necessarily signify the scaling the Matterhorn, but rather active life among the mountains; receiving at first hand the secrets of the ranges, valleys, passes, and peaks. For the historical student, mountaineering should be a constant inspiration as well as to the physicist or mineralogist, and inspiration in his work counts more perhaps than in the work of his compeers. But he has a very direct per-

sonal interest in mountaineering, namely, insight gained into marches, migrations, the strategy and tactics of war. There can hardly be a more instructive way of spending a few weeks' vacation than by a walk through such passes and valleys as, for example, the Simplon, St. Bernard, St. Gothard, and Inn Valley, for the purpose of illustrating the great movements of history. To a civilian the strategic operations that precede a battle and the significance of the event are positively illuminated by intelligent wandering over the broken country in the neighborhood. It is marvelous why teachers and investigators of early Roman history do not devote some of their time to saunterings among the middle Apennines. They would clear up many of their confused notions about Æquians, Volscians, Hernicans, Polybius, Hannibal, and Sulla. The writer in a three days' ramble through the hills of the Lake George and Champlain district obtained a better understanding of the great events connected with northeastern New York than from a half semester of arm-chair study. Details of actions become more intelligible from a good-view point. Commentators of Xenophon should thread the mazes of the Taurus and Niphates. Critics of Livy should curtail their visits to Italian picture galleries and increase their allowance of time to Italian peaks. Embryonic doctors of philosophy and pedagogues would be benefited by neglecting boulevards and beaches for the knapsack and the wind-swept mule path.

To the student of ethnology and sociology mountaineering ought to prove of inestimable value. Consider the opportunities still held out in the secluded valleys of the Caucasus, Pyrenees, and Alps, or the hardly more familiar isolated districts of this country. The photographer in search of the picturesque, the literary artist in quest of local color, resort to the Grisons, to the Great Smoky Mountains, why not also the sociologist?

There is yet another advantage of wandering in the highlands which can best be appreciated by one who has had occasion to wrestle with questions of historical and political geography. Where the political divisions of historic import lie close together in complicated and perplexing arrangement, as in Germany, Italy, Greece, and various portions of central and southern Europe, it is safe to affirm that the tangle becomes wonderfully straightened out after a journey of several days through the intricate regions. The reason of being for

the different cantons and communities of Switzerland, for instance, grows much clearer at the end of a detailed and intimate survey, wandering over heights and through valleys.

In this era of historic pilgrimages it seems unnecessary to sound the praises of trips to noted scenes. The committees who arrange and carry out these scientific picnics, here or in Europe, deserve well of the country—in trade language, they fill a long-felt want—and the impetus thus given must prove of great value, in spite of disadvantages inevitably connected with seeing things en masse in the guidebook fashion with ccierones. While the conductors of these excursions are planning this and that historic tour, it is a pity that they could not arrange a more extended journey to Italy or Greece for the benefit of students. Perhaps the same result will be attained in a quieter way. Local teachers conduct grammar school and academic classes to Gettysburg and Lexington; why should not local professors lead their historical seminaries to the highlands of the Hudson, to the Ticonderoga hills, or to the Shenandoah region? Beginnings have been made in this direction in the scientific work of colleges and universities; witness the honorable record in exploration of Bowdoin, Princeton, Yale, and Harvard. Why is it not possible in history? Scores of college students take a holiday on the Continent; why can they not rationally direct their steps to Cithæron and the Pass of Daphne, as well as to Unter den Linden and the Boulevard des Capucines?

This paper can not more fittingly be closed than by showing the possibilities that wait for the historical mountaineer in an ideal example. The lofty and romantic regions that lie within a radius of a few hundred miles of the Vale of Cashmere contain, we may assert, the riddle of Asiatic history. English sportsmen, in search of huge game, Russian semi-military, semi-political adventurers, and natives of infinite diversity have had this magnificent domain to themselves. As England pushes out one way and Russia pierces another, the mazes of this mountain mass become better known and more accessible. Let a small band of students, whether commissioned by State or university, or both, traverse these wilds, rich in the accumulated legend and history of thousands of years, a band which might contain something of the keen topographical eye of a Mahaffy, the encyclopedic knowledge of a Ranke, the generalizing and comparative powers of a Freeman, and the

graphic pen of a Parkman, and consider that they would in a comparatively short space of time penetrate into localities famous since the days of Aryan migrations, of Alexander, Jenghiz Khan, Buddhist and Mohammedan advances, Baber, Nadir Shah, down to the hill campaigns of Russians and Englishmen in the present generation. Can anyone doubt the value of the contributions to science brought back by such a commission?

In a far humbler way it is in the reach of every teacher of history, of every writer of history, of every intelligent and painstaking reader of history, to enlarge his knowledge and clarify his conceptions by hieing away to the historic hills. Renewed vigor lies there for body and mind; there await us new understanding of the problems of human movements; new light on the dark pages of confused events; broader realization of the grandeur of history.

XXVI.—CAUSES AND CONSEQUENCES OF THE PARTY REVOLUTION OF 1800.

By Prof. ANSON D. MORSE.

If we knew the full and exact truth respecting our first party revolution, we could reason more wisely in regard to later ones and act more prudently in regard to those which are to come. The materials on which to base a judgment of this revolution are abundant and excellent. There is little or no dispute respecting important matters of fact. Of particular value are the opinions which we find in the private correspondence of party leaders and of other interested and sagacious men of that day. Instructive, too, are the histories of the Federalist period, some of which compare favorably with the best works on other periods. And yet, despite the abundance and quality of the material and the skill of those by whom it has been worked, I am compelled to think that in one respect the results are not satisfying; it seems to me that as a rule the factor of party has not been appreciated at its true worth. The views to which I beg your attention are the results of a study prompted by the conviction that since the establishment of party government the key to political history is to be found in a study of the nature and history of party.

It is agreed that among the factors which had weight in the struggle of the year 1800, the following deserve special mention:

(1) Peace with France, since this took from the Federalists the popularity which they had enjoyed as the war party of 1797 and 1798 and left upon them the odium of having pushed unduly far burdensome war preparations which the event had proved unnecessary.

(2) The quarrels of Adams and Hamilton, which on the eve of the election developed factions within the party that were little less hostile to one another than to the common enemy.

(3) The blunders in party strategy committed by the Federalists in passing the alien and sedition acts, in raising the term of naturalization from five to fourteen years, in claiming for the Federal courts a common-law jurisdiction, and in pushing prosecutions under the alien and sedition acts in the doubtful Middle States.

(4) The Virginia and Kentucky resolutions.

Concerning the influence of the peace with France and of the Federalist dissensions and war measures there is and can be no question—they were each and all greatly hurtful to the party in power. Concerning the influence of the fourth factor, the Virginia and Kentucky resolutions, there is a wide difference of view. Quite too generally these famous utterances have been condemned on the ground of their supposed relationship to later sectional movements;—that in New England between 1807 and 1814, in South Carolina in 1832, and in the Southern division of the Union in 1861. It is quite true that they were quoted as authority by the sectionalists of the North as well as those of the South; on the other hand, it should be remembered, first, that the true source of sectionalism is to be found in what Calhoun called the contrariety of the interests of the sections, rather than in the theories of the Constitution, and second, that the motive which gave birth to the resolutions had in it absolutely nothing of a sectional nature. Their aim was to protect those rights of the individual citizen which had been violated by the alien and sedition acts;—rights which were as much an object of concern to Matthew Lyon of Vermont, as to any citizen of Virginia or South Carolina. It is true that the authors of the resolutions found no way of escape from unconstitutional and tyrannous legislation on the part of the National Government save in a theory of the rights of the States which history has proven untenable, and public opinion now decisively rejects; but it should be kept in mind that the theory of the Union which now prevails had not been accepted in 1798 by the mass of the American people. How little the views of Madison and Jefferson jarred upon the comparatively immature and feeble national sense of a hundred years ago may be inferred from two circumstances—first, the extent, in the period immediately subsequent, of the defection of the

Federalists themselves from the national idea, and second, the formal acceptance of the doctrine of State sovereignty by a great and successful party at a later period when the spirit of nationality had reached a stage of development considerably more advanced. Indeed, it is probable that at the date of their issue a considerable majority of American citizens accepted the theory of the Union on which the resolutions were based. But our present concern is not so much the relationship of the resolutions to sectionalism as their immediate effect upon the fortunes of the Republican party. In the principles of that party the rights of the individual and the rights of the States then held the first place. Every true Republican believed that the Federalist legislation of 1798 was unconstitutional, and therefore, to quote the words of Jefferson, "as null and void as if Congress had commanded the people to bow down and worship a graven image;" and many Republicans, among them Jefferson himself, believed that this legislation was part of a conspiracy to transform our Government into a monarchy. Protection through the Federal judiciary they did not consider a possibility. That body was regarded as thoroughly partisan; and one of its members at least, Judge Chase, had given good ground for that opinion. What Jefferson wrote John Dickinson at the close of 1801 tells fairly the prevalent view:

> They [the Federalists] have retired into the judiciary as a stronghold. There the remains of Federalism are to be preserved and fed from the Treasury, and from that battery all the works of Republicanism are to be beaten down. (Wks., LV, p. 424.)

In fact, during the years under consideration, the distrust of the early Republicans toward the Federal judiciary was not less general than that of the later Republicans during the first five years which followed the publication of the Dred Scott decision. It seemed, therefore, an imperative necessity that a protest as solemn, as earnest, and as influential as possible should be uttered, and this was what the resolutions accomplished. Silence under such circumstances would have appeared cowardly, and must have proved demoralizing.

The fact that the legislatures of most of the other States rejected both the theory and the propositions embodied in the resolutions signifies little in regard to the attitude of the people, for those legislatures had been chosen under the influence of the war fever. Perhaps the greatest party advantage which the resolutions secured was this: they drew the atten-

tion of the Republicans to domestic affairs and to their own political principles, and in this way weakened and broke the spell of France which had done more than all things else to hurt their usefulness as citizens and to bring them into discredit as a party. Taken as a whole I think it reasonable to conclude that peace with France, the errors of the Federalists, and the issue of the Virginia and Kentucky resolutions were the immediate causes of the Republican victory. They seem to me to explain satisfactorily why this occurred in 1800 rather than four years later.

But to know immediate causes is not enough, if it can be shown that a more important cause lies behind and brings these into operation. Why, in the year 1798, were the Federalists stricken with judicial blindness? Why, in 1801, could John Adams truly write:

> No party that ever existed knew itself so little or so vainly overrated its own influence or popularity as ours. None ever understood so ill the causes of its own power or so wantonly destroyed them. (Wks., Vol. IX, p. 582.)

I think the answer is this: the useful work for the sake of which this party came into existence was done, and the time had come when, in consequence of the completion of their task, the Federalists were bound to commit errors—if not in one way, then in another—when it was well for the country that they should err so often and so grievously that the people would take from them the control of the Government. Underneath the quarrels of the leaders and the blind and foolish legislation of 1798; underneath the growing regard for power as compared with devotion to public service, illustrated in the attempt of the party to give the Presidency, against the will of the people and contrary to public interest, to Aaron Burr rather than to Jefferson; underneath the moral degeneracy which made it possible for Hamilton, in May of 1800, to write that letter on which Governor Jay penned the words: "Proposing a measure for party purposes which it would not become me to adopt"—underneath these and all other acts of folly and signs of decay I believe we shall find a sufficient cause in the fact, that the services which the country needed from the Federalists had already been rendered fully and excellently; for, in the case of a political party, as truly as in that of an individual man, wisdom, power, and moral health depend upon having useful work to do; and, in the one case, as surely as in the other, when this is fully done dissolution must begin.

This brings us to the question: What is the principle that should regulate a party's term of office? That this should not be prolonged indefinitely is obvious, for that would bring party government to an end; it would give to one element in the state an undisputed and permanent ascendency; the remaining elements it would first oppress and afterwards destroy; and the political stagnation that would follow, would soon transform such progressive countries as the United States, England, and France into so many western Chinas.

Moreover, these results of a permanent tenure would follow all the more surely and swiftly if the party in power could justify the partisan claim that, even at its worst, it was better than the best of its rivals. Such a party would enjoy a moral superiority in the presence of which other parties would seem to have no right to exist—would appear, in fact, more like outlaws than legitimate members of the political system. It is on this very plea of an inherent and durable superiority put forward by that element which has actual possession of the Government, that most of the despotisms of history have been built. Whatever may have been true in the lower stages of political progress, it never can be true in that more advanced stage where government by party becomes possible and useful that any one party can possess a lasting monopoly of the capacity for public service; for this must lead first to a one-sided development of the state, and then to the permanent arrest of its development.

The term of power for every party must therefore be limited; and the rule which should determine its beginning and end is, I think, the following: office should be given to a particular party whenever the most urgent public needs are such that this party can satisfy them better than any other party; the party thus raised to power should remain in office as long as these conditions hold; it should be deprived of office when changes in the state or in parties make it clear that some other party can provide better for the most urgent wants of the people. The state is the master; parties are its servants; and, just as an ordinary master employs at any particular time the man who has the greatest aptitude for the piece of work in hand, so the public master, the state, should call at each period into its employ that public servant who can best perform the tasks which belongs to this period. Let us apply this principle to the Federalist party and period. I take the

date 1786 as approximately correct for the beginnings of the Federalist movement. In that year the conviction that the existing system could not continue, became widespread, and the cooperation of many influential citizens through correspondence and public action to establish a better system was fairly begun. To that year belong both Shay's rebellion and the Annapolis convention. What at this date were the most urgent needs of the United States? The salient features of the situation were these: virtual repudiation by the General Government; various forms and degrees of repudiation by many of the State governments; the collapse of credit, public and private; general financial unsoundness; general industrial depression; widespread discontent; the beginnings of civil war in Massachusetts; a condition of things in other States likely to lead to civil war; growing discord between the States; the Federal Government powerless and despised at home, and abroad, an object of contempt; in a word, the Union far advanced toward dissolution and the States a prey to anarchy. Is it not evident that a cure for these evils was the urgent, the overshadowing public need of the year 1786? But in order to be efficacious such a cure must be applied to the sources of the evils, and by those who best understood them and had the greatest interest and skill in combating them. In the Philadelphia convention Gerry, himself a Democrat, said: "The evils we experience flow from an excess of democracy." (Elliot's Debates, Vol. V, p. 136.) This was the truth. A more rapid progress toward democracy than, with due regard to the public welfare, was possible in the Old World, was the distinctive feature of American political history during the colonial period. The common view that the cause of the Revolution was the determination of Parliament to withhold from Americans rights which belonged to Englishmen—in particular the right to be taxed only by their representatives—gives but a part, and that the less important part, of the explanation.

The fact is that before the passage of the stamp act the extent to which the average citizen in the colonies participated in government was far greater than that of his kinsmen in Great Britain; and he resolved to throw off the yoke of England, not in order that he might possess the rights of Englishmen, but in order to exercise without hindrance far greater rights. But independence brought evil as well as good. It gave to democracy an impulse stronger than it could bear; the

restraints which England had exercised, though irksome, had been wholesome; their sudden removal, and the failure of the Government of the Confederation, which tried to do for the States what England had done for the colonies, left the United States an aggregation, rather than a union, of discordant democracies with marked socialistic tendencies. Then it was seen that in order to restore their broken relationship to the outer world and to one another, and to arrest the dissolution of the social order, the most promising means were organization on a national basis—the creation of a powerful general government, and the withdrawal from the States of the powers they had abused. Only in these ways could the "excess of democracy" be restrained and the United States find and hold its proper place in the civilized world. To do these things, to create this organization, to establish this Government, to take from the States those functions whose exercise was destroying both the Union and themselves—these were the tasks, the mission of the Federalist party. For this mission that party had a special aptitude. It drew to its support the wealth, the intelligence, and the conservatism of the endangered Union. The political history of the years from 1786 to 1800 is, in the main, the record of the way in which this mission was fulfilled. I think it fair to claim for the Federalist party most of what is distinctly new and useful in public policy within this period. The Constitution of 1787, its first and most important undertaking, was fortunately not wholly Federalist; had it been so, it would have been untrue to American political character, and it could not have provided for any long period for American political wants. Nevertheless, most, if not all, of the provisions which make the Constitution of 1787 unlike and superior to the Articles of Confederation are of Federalist origin. The ratification of the Constitution, the second undertaking of the Federalists, was also accomplished, though not without a desperate and what at times seemed an almost hopeless struggle. Success likewise attended the third and final undertaking, namely, to inaugurate the new Government in such a way as to secure for it respect, obedience, and good-will, and to employ the greatly increased Federal powers so as to remedy effectively existing public evils.

The measure of success in this last feature of the Federalist programme is shown by the fact that in the year 1800 every one of the conditions which imperiled the public welfare fourteen

years earlier had disappeared. The aims set forth in the preamble of the Constitution had been realized; a more perfect union had been formed; justice had been established; domestic tranquillity insured; the common defense provided for; the general welfare promoted, and the blessings of liberty secured. Moreover, the work of the Federalists had been done so wisely as to make permanent every useful modification of public policy which they had introduced. Hence, judged from the standpoint of the public interests, there was no need that the Federalists should remain in office, either for the sake of new services or to defend good work already accomplished. The only possible ground on which a prolongation of their term could be demanded was that their ability and experience had made them, in the details of lawmaking and administration, more capable than their rivals. That their capacity in these respects was superior may be conceded; but, as we have already seen, the claim based upon this superiority is incompatible with the very idea of party government; for, carried out, it involves a permanent tenure of office for one party, and consequently the destruction of government by party.

Thus much in regard to the causes; what of the consequences of the party revolution of 1800? Not infrequently defeat is good for a party; it operates as a disciplinary experience whose fruits are reorganization on a sounder basis, the supremacy of wiser leaders and counsels, and a renewal of moral health. But it was not so with the Federalists; they went on from one act of folly and dishonor to another until the verdict of their contemporaries, that they were fatuous in counsel, futile in action, wanting in patriotism, seems likely to become the verdict of history. Why was it that this party, so wise, so patriotic, so surpassingly useful in the early days, became, after its first reverse, so rapidly degenerate? The answer is, because, when its first work was done, its rival took care that it should find no new work to do. In no portion of his varied career did Jefferson show greater political wisdom than in his course toward the defeated Federalists. He refused to persecute; he did everything to conciliate; and in the inaugural of 1801 he appropriated and took under his protection and that of his party the useful work that they had done. This policy made a revival of federalism impossible. Had the Republicans attacked the Constitution or sought to weaken the National Government, the Federalists, in defend-

ing their own creations, would have had a future. But Jefferson's policy deprived them of the most honorable and useful activity which is open to a party in opposition, and left to them little more than a choice of ways to die. A second result of Jefferson's policy was that it helped to federalize the Republicans. Desertion from the defeated to the victorious party soon grew into a stampede, and the new element in the Republican camp became quickly and greatly influential. Looked at from the standpoint of party, the destruction of the Federalists and the federalization of the Republicans are the most striking consequences of the revolution of 1800. From the higher standpoint of the State the most important consequences are these: first, the resumption of that progress toward democracy which had been the marked characteristic of the colonial and Revolutionary periods, but had been checked during the conservative aristocratic reaction of the years 1786 to 1800;—a progress on whose resumption and healthful unfolding was to depend what is most distinctive and beneficent in the contribution of America to the civilization of the world; and second, a powerful impulse to the forces which were slowly establishing in our people a national and American character. The trouble in 1786 had been that through breaking our relationship to Great Britain we had come to occupy the position of a nation without possessing either a national organization or a national character. In 1800 the national organization, thanks to the Federalists, had been supplied, but we still lacked a national American character. This, then, was the urgent, the overshadowing want of the new period. The attitude of the mass of the people toward the beneficial changes made by the Federalists had been either reluctant acquiescence or passionate opposition; only in a slight degree had they unlearned the provincialism and the unbalanced democracy that had produced the calamities of 1786; only in a slight degree had they concerned themselves hitherto for national interests or national honor; but now, through their elevation to power, the welfare and the good name of the nation were placed in their keeping, and the new responsibility tended to develop within them those larger political conceptions which, when added to those traits which had distinguished them from the beginning, namely, love of freedom and devotion to self-government, were to make the character of our people national and American;—and these were the greatest and best of the consequences of the party revolution of 1800.

XXVII.—THE TENNIS COURT OATH.

By Prof. JAMES H. ROBINSON.

Probably in no period of history is the temptation to exaggerate the importance of dramatic events by a false isolation so great as in the case of the early years of the French Revolution. This tendency in the past has rendered the reconstruction or reinterpretation of the history of this epoch especially necessary. Until Prof. H. Morse Stephens published his excellent book, the English-reading public had relied pretty exclusively upon Carlyle's picture of events. Carlyle's account, in spite of its brilliancy, is quite conventional. That is to say, he looks at matters with the natural preconceptions of a broad-minded but somewhat careless observer, who makes no attempt to restate events in new relations or from any other than the traditional standpoint. The Tennis Court Oath is to him, and to most other historians, a picturesque incident associated primarily with a court intrigue. No attempt has been made, so far as I am aware, to assign to this event its proper place in the great and irresistible current of advance. It is, after all, but recently that writers of history have recognized as their chief task the painstaking investigation of the often obscure causal relations of events, the tracing of gradual and inevitable development where only seemingly spasmodic and erratic outbursts have previously been noticed. It is with this in view that I shall try to sketch the history of the Tennis Court Oath of June 20, 1789, and to show that it was not the unpremeditated outcome of invading carpenters, "hammering, sawing, and operative screeching," but that the events of June 20 constitute in reality only a slight although important advance beyond the state of affairs on June 19.

On finding their place of assembly occupied by the carpenters, the representatives of the third estate gathered in the

Tennis Court of Versailles and adopted the following resolution:

> The National Assembly, regarding itself as called upon to establish the constitution of the kingdom, effect a regeneration of the State (l'ordre public), and maintain the true principles of monarchy, may not be prevented from continuing its deliberations in whatever place it may be forced to take up its sittings. Maintaining, further, that wherever its members are assembled there is the National Assembly, the Assembly decrees that all its members shall immediately take a solemn oath never to separate, and to come together wherever circumstances may dictate until the constitution of the kingdom shall be established and placed upon a firm foundation.[1]

The importance of this resolution lies in the fact that it was the first distinct and formal recognition of the Assembly's mission. A resolution had been passed three days before (June 17) by which the deputies of the third estate had assumed the title of a national assembly. The deputies had moreover taken an oath upon this same 17th of June, very like the Tennis Court Oath itself, to the effect that "We swear and pledge ourselves to fulfill with zeal and fidelity the duties which devolve upon us." "This oath,"[2] we are told, "taken by six hundred members surrounded by four thousand spectators (the public having gathered in crowds at this session), excited the greatest emotion and constituted a most imposing spectacle." Hence all that is apparently novel in the Tennis Court Oath is the clear enunciation that the establishment of a constitution is the essential task of the Assembly.

So far as I know no adequate account has been given of the development of this idea of a constitution. That it was not new on the morning of June 20, 1789, is obvious. The unanimous recognition on the part of the deputies that the true object of the Assembly was the establishment of a constitution is quite sufficient to prove that the public mind was ripe for this declaration. It will be possible to indicate here only in a brief and general way the steps by which the French nation attained to the clear conviction that the salvation of the country depended upon the distinct formulation of the principles of government, a conviction which receives its first official announcement in the Tennis Court Oath.

The motives advanced by the King and ministers for convoking the estates general had been but vaguely conceived.

[1] Histoire Parlementaire, Vol. II, p. 3.
[2] Ib., Vol. I, p. 471.

and therefore but vaguely indicated in the letter of summons, January 24, 1789.[1] "We have," the document relates, "need of the counsel of our faithful subjects to aid us in overcoming all the difficulties in which we are involved respecting the state of our finances, and to establish, according to our wishes, a constant and invariable order in the various parts of the government which affect the happiness of our subjects and the prosperity of our Kingdom." The phrase, "fixed and constant order in all parts of the administration," occurs three times in this brief document as one of the great objects which the estates general, in conjunction with the King, are expected to bring about. Necker's report to the King, issued a month previous to the actual summoning of the estates, although he claims to reflect the inmost purposes of the monarch, really does little to define the vague terms used in the letter of summons itself. He says nothing of a constitution, but seems to take for granted that the estates general are to be regularly and periodically convened in the future, that the worst abuses are to be done away with, and the administration improved.[2] No further programme was furnished by the government until the King submitted an elaborate and interesting plan of reform in thirty-five articles[3] at the royal session, three days after the Tennis Court Oath.

The vague ideas of reform advanced by the Government had, however, in the minds of the leading spirits, taken a much more definite shape and developed into the matured conception of a constitution some time before the assembling of the estates general. Still earlier we find a remarkable forecast of ideas which became the basis of the constitutional revolution in the remonstrances of the Parlements. The superior courts of France, although essentially aristocratic bodies, had, anomalously enough, formulated the theory of a constitution during their struggles with the ministry and had taken pains to familiarize the public with the idea. I take an example from a remonstrance addressed to the King by the Parlement of Brittany, dated July, 1771.[4] "There is," the court states, "an essential difference between the transitory regulations which vary with the times and the fundamental laws upon which the

[1] Archives Parlementaires, Vol. I, pp. 543, 544.

[2] Ib., Vol. I, pp. 489 ff, especially 496, 497.

[3] Histoire Parlementaire, Vol. II, pp. 16 ff.

[4] This remonstrance is in the library of Cornell University.

constitution of the monarchy rests. In respect to the former (that is, the transitory regulations) it is the duty of the courts to influence and enlighten the ruling power (l'autorité), although their opinions must, in the last instance, yield to the decisions of your wisdom, since it appertains to you alone to regulate everything relating to the administration. To administer the State is not, however, to change its constitution. * * * It is therefore most indispensable to distinguish or to except the cases where the right of expostulation suffices to enlighten the ruling power in an administration which in spite of its wide scope still has its limits and those cases where the happy inability (of the monarch) to overstep the bounds established by the constitution implies the power necessary legally to oppose what an arbitrary will can not and may not do." "Adulation itself," the court urged to the King's face, "would not dare to assert that in every case anything the King willed becomes forthwith a law of the monarchy." While this is obviously an ex parte argument with a view to justifying the pretensions of the courts, it is a remarkable approximation to the later ideas of a constitution as distinguished from current statutory legislation. Not only was the word "constitution" familiar to the thoughtful Frenchman many years before the revolution, but the idea which underlies the modern conception of a constitutional government was ready at hand.[1]

Nothing need be said here of the influence of our own early State constitutions, which must have familiarized the French with written constitutions, since they were published and apparently widely circulated in France during the decade preceding the assembling of the estates general. Mr. Rosenthal has collected everything he could find upon the subject in his careful work upon The Influence of the United States upon France.[2]

As was most natural, the determination of the King to summon the estates general called forth a great number of pamphlets, especially in the latter half of the year 1788. These corresponded in function to the modern newspaper, which very quickly developed from them. While these dealt very largely with the question of the number of representatives

[1] This subject is more fully treated in a version of this paper which appeared in the Political Science Monthly, Sept., 1885.

[2] Rosenthal, Lewis. America and France. Influence of the United States on France in the Eighteenth Century. New York: Holt. 1882.

and the method of voting in the Assembly, some took up the work which the estates general had before it. That of Siéyès is well known, and its author occupied an authoritative position in the Assembly from the first. A less known pamphlet, published anonymously, but attributed with seemingly good reason to Rabaut St.-Etienne—the most radical, perhaps, of the influential speakers in the Assembly before June 20—is analyzed in the Introduction to the Moniteur.[1] This brochure, published a year before the Tennis Court Oath, sets forth the necessity of establishing a constitution. "So long as the changing and arbitrary form of your administration continues to exist," the author urges, "so long will the ministers, to whom your interests are temporarily confided, be in a position to overturn the established order, modify or abrogate the laws and regulations made by their predecessors, while all your efforts to correct the abuses and better your situation will be futile and without permanent results." In determining the principles of a good constitution, while the author speaks of the constitutions of Switzerland and of the United States, he evidently recognizes that England after all furnished the most feasible model. The constitution ought, he holds, to provide for two houses of legislation, a separation of the three powers of government, ministerial responsibility, security of person and property, liberty of the press, etc.—a complete programme, extracted, most probably, from Montesquieu. So far, however, as I have examined the pamphlets of the times—and a considerable collection is available in the collection of the Pennsylvania Historical Society's library—the one just described seems to be exceptional. As Sorel says, "The French were much more anxious for civil than for political liberty." We find a great deal more discussion of financial oppression and of the existing social and economic abuses than of a proposed political or constitutional organization.

The same tendency is apparent in the cahiers. Among these the cahier of Paris intra muros forms a marked exception. It was drawn up later than the rest, not being completed until after May 5, the day upon which the estates general met. The committee appointed to draft the cahier included a number of distinguished men: Marmontel, Lacretelle, Bailly, Target,

[1] A la nation française, sur les vices de son gouvernement, sur la nécessité d'établir une constitution et sur la composition des états généraux. Archives Parlementaires, Vol. I, pp. 572, 573.

Camus, and others.[1] The result of their deliberations is the most complete scheme of a constitution which appeared before that drawn up in the National Assembly itself. The first division of the cahier is devoted to this subject, and the representatives of Paris "are expressly forbidden to consent to any subsidy or loan until the declaration of the rights of the nation shall have become a law, and the foundations of a constitution are agreed upon and assured."

The draft of the constitution is preceded, like that actually decreed later in the National Assembly, by a declaration of rights, which the cahier claims should "constitute a national charter and form the basis of the French Government." In no other cahier, so far as I have observed, except in that of the Bailliage of Nemours,[2] is this characteristic idea of the declaration of rights, regarded as an essential element of the constitution, so clearly stated. Not only was this suggestion accepted by the National Assembly, which, as is well known, formulated the "Declaration of rights of man and the citizen" before proceeding to the constitution itself, but the clauses themselves, as they appear in this cahier of Paris, are strikingly similar to those finally adopted by the Assembly. The importance of the well-ordered constitutional provisions, suggested in the cahier, can best be estimated by their close approach to those in the constitution of 1791. I quote a few instances of articles proposed by the Paris electoral assembly. "In the French Monarchy the legislative power belongs to the nation, in conjunction with the King. The executive power belongs to the King alone." "The estates general shall be periodically convoked every three years, without, however, excluding extraordinary sessions. They shall never adjourn without indicating the day and place of their next session." "Anyone convicted of an attempt to prevent the assembling of the

[1] Stephens's French Revolution, Vol. I, p. 50.

[2] The third estates of the Bailliage of Nemours charges its deputies to demand that "when the estates general shall have recognized and set forth those natural and social rights of man and of the citizen, the King shall draw up a declaration which shall be registered by all the courts, published several times a year in all the churches, and inserted in all the books destined for the instruction of the earliest childhood. No one shall be admitted or appointed to any judicial, magisterial, or administrative office without having repeated this declaration from memory." A more elaborate draft of a declaration is furnished by this Bailliage of Nemours than by Paris itself.

estates general shall be declared a traitor to his country, guilty of the crime of lèse-nation." (Sic!) "In the intervals between the sessions of the estates general only provisional regulations may be issued in execution of that which has been decreed in the preceding estates general, nor can these regulations be made laws, except in the following estates general." Many more examples might be given to illustrate the similarity between this sketch and the plan ultimately adopted. The cahier claims that "the constitution which shall be drawn up in the present estates general, according to the principles which have just been set forth, shall be the property of the nation, and may not be changed or modified except by the constituent power; that is to say, by the nation itself, or by its representatives elected ad hoc by the whole body of citizens for the single purpose of supplementing or perfecting this constitution."

There was an attempt made during the week preceding the Tennis Court Oath to induce the National Assembly, as it now called itself, to pass a decree in which the formation of a constitution was designated as one of the great objects to be attained. Mirabeau claimed that the King himself had recognized "the necessity of giving France a fixed method of government,"[1] and consequently regarded the laying of "the foundations of the wise and felicitous constitution" as the inevitable and obvious duty of the Assembly.[2] Rabaut de Sainte Etienne, in a series of resolutions offered on the 15th of June, occupies the same position.[3] On the 17th of June the Assembly finally defined its constitutional functions in a vaguer form as "the determination of the principles of the national regeneration."[4]

Thus, although the representatives of the third estate were chiefly occupied before June 20 with a question of the method of voting and its precise relation to the other two orders, the great question of the constitution was not lost sight of. If, then, the Tennis Court Oath was the first official declaration of the purpose of the Assembly, it was the inevitable outcome of preceding conditions, and is really only a restatement of a resolution adopted by the Assembly several days before (June 17).

[1] Histoire Parlementaire, Vol. I, p. 445.
[2] Ib., Vol. I, p. 453.
[3] Ib., Vol. I, p. 457.
[4] Ib., Vol. I, p. 472.

XXVIII.—WHAT THE UNITED STATES GOVERNMENT HAS DONE FOR HISTORY.

By A. Howard Clark.

It was not till about 1875 that the Government and people of the United States seemed to realize that our country has a history. Until then we had been growing so fast—so multiplied were the political and economic problems incident to the amalgamation of the millions of all nations that had flocked to our shores—that we could hardly stop to study our history. The nation suddenly awakened to the fact that a hundred years had passed since the struggle for independence began, and throughout the land every citizen, poor and rich, every State, small and great, felt in lesser or greater degree a desire to commemorate the first century of our existence as a united people, and, aided by the Federal Government, there was held in Philadelphia, where the United States was born, the great International Centennial Exposition, where we showed to one another and to visitors gathered from all lands what a century had done for us and what we had accomplished in those years.

The year 1876 was a year of history and an historical year. There sprang up then all over the country local historical societies, and ever since they have continued to multiply, till now the State and local organizations engaged in historical work number more than 250.

One of the most important concentrations of this general interest in American history was effected in Saratoga ten years ago, when the American Historical Association was formally instituted.

The United States Government has spent more than $2,000,000 in the acquisition and publication of records pertaining alone to our country's history. It has spent many millions more in the erection of historical memorials, in preservation of historical places, and in celebrations of historical

events, and is annually expending more than $250,000 directly in behalf of American history.

No nation ever undertook such a magnificent historical work as is now approaching completion under charge of most efficient bureaus of the War and Navy Departments. What war has ever been officially recorded in such detail and with such absolute accuracy as the late civil war—140 volumes of 100,000 pages of authentic documents, with half a thousand accurate maps of battlefields and plans, telling the tragic story of the armies, both Union and Confederate, during those eventful years; and 25 volumes more, telling in like manner of the operations of the navies, North and South, during that war.

To record the history of the colonial period belongs primarily to the original colonies and not to the Federal Government, yet our Government has collected a mass of material pertaining to that era. The patriotic Peter Force, a citizen of the District of Columbia, brought together a storehouse of authentic information concerning the colonial, the Revolutionary, and the earlier constitutional periods, and under his direction the Government, between 1833 and 1855, published 9 folio volumes of American Archives gathered by him, and covering the doings of 1774 and 1775. Unfortunate opposition arose from some unknown source and blocked this magnificent work so well begun. Mr. Force was greatly discouraged at the failure of the Government to continue this valuable series, and in 1867 he sold to the United States for $100,000 all his papers and library, forming a collection of 360 folio volumes of manuscripts and 60,000 books and pamphlets[1] relating entirely to American history; and these records are now preserved in the Library of Congress, where also are carefully stored more than 5,000 original manuscripts pertaining to early periods of our history. The question of completing the publication of Force's American Archives, estimated to make 30 printed volumes, is well worth careful consideration at an early day, and thus fill up the printed records of those interesting years from 1775 to 1789, when the series of the State Papers begins with the First Congress under the Constitution.

[1] Special report of the Librarian of Congress to the Joint Committee on the Library concerning the historical library of Peter Force, esq., Washington, 1867, 8vo., pp. 8.

During the second session of the present Congress two measures of great importance to American history were enacted. The first measure requires that all military records, such as muster and pay rolls, orders, and reports relating to the personnel or the operations of the armies of the Revolutionary war and of the war of 1812 now in any of the Executive Departments shall be transferred to the Secretary of War, to be preserved, indexed, and prepared for publication.[1] A force of trained experts is now industriously employed in carrying out the provisions of this act, and the record index of service of the soldiers of the American Revolution and the war of 1812 will soon be completed with the same degree of precision as already applied to the two and a half million enlistments of the civil war, so that the personal record of each patriot of the first wars of our nation may at once be shown.

The second measure of equal if not greater interest to students of American history directs the Secretary of State to cause the Revolutionary archives, now deposited in his Department, to be carefully examined, and to ascertain what portions are of sufficient importance and historical value to publish, and the number of printed volumes they would make and the reasonable cost of their publication and editing, and report the result to Congress with such recommendations as he may deem proper.[2]

In response to this order the Secretary of State recommended[3] to Congress that the documents in question be printed in 50 volumes, estimated to cost $100,750, and submitted a list of the manuscript volumes of Revolutionary records, which is presented herewith as an appendix.

During the last eighteen months the Bureau of Rolls and Library of the Department of State has published "blue books," consisting of calendars of the 300 volumes of papers of the Continental Congress and of some of the 600 volumes of the manuscripts of Washington, Madison, and Monroe; also a documentary history of the Constitution and the Federal Convention, all of them of great value as reference books for stu-

[1] Sundry civil act, Fifty-third Congress, second session. Approved August 18, 1894.

[2] Ibid.

[3] Letter from the Secretary of State, Fifty-third Congress, third session, Senate Ex. Doc. No. 22.

dents of history. To make known what things are hid is like creating anew.

Our nation is great, and its history, covering a century and a score of years, must make many volumes. The deeds of bravery and the military and naval operations of the last great war are now fully recorded, or soon will be. The official story of the American Revolution and of other early wars must next be given to the people—stories of those struggles that made this nation which the last war preserved.

The diplomatic history of the period of the Revolution was published many years ago under the supervision of the eminent Jared Sparks, and lately republished in five volumes under the able editorship of Dr. Wharton and our fellow-member Prof. J. B. Moore, yet much of the diplomatic history of later periods remains unprinted though carefully preserved in the archives of the State Department.

In 1887 Congress created a commission[1] composed of the Secretary of State, the Librarian of Congress, and the Secretary of the Smithsonian Institution, and their successors in office, to report to Congress the character and value of the historical and other manuscripts belonging to the Government of the United States and what method and policy should be pursued in regard to editing and publishing the same, or any of them. This commission has not yet transmitted its report, but we still hope that it may make some practical recommendations.

No nation ever possessed more complete records of its history than are now preserved in the Federal and State archives, and the time is at hand when these records should be in print to be read and studied by our youth and by those of older growth as well, who in reading them will become better qualified to enjoy to its full extent the advantages of this free Government.

Though the Government has done so much, yet much more remains undone. The official papers of Washington, of Jefferson, Madison, Monroe, Hamilton, Franklin, and of some other eminent Americans whose lives were part of the nation's history during historical periods have been secured by the Government at great cost, and are carefully guarded from harm, though many of them are yet unprinted. Most impor-

[1] Sundry civil act, approved March 3, 1887.

tant manuscripts of other Americans who were a part of our history are scattered over the country, many of them in private hands—manuscripts that would throw light on interesting political periods now dimly understood. All these should be sought out and permanently preserved against destruction.

The several patriotic societies, based on hereditary descent from active participants in the struggles of colonial and Revolutionary days, already have a membership of nearly 20,000 women and men, each eager to learn all that can be learned of the doings of their ancestors, and as the official source of information increased demands are made upon the National and State governments for ancestral records.

One of the most important acts of the Government in behalf of history was the incorporation of the American Historical Association, by act of Congress approved January 4, 1889, "for the promotion of historical studies, the collection and preservation of historical manuscripts, and for kindred purposes in the interest of American history and of history in America," and Congress has made permanent provision for the official publication of the association's annual report concerning its proceedings and the condition of historical study in America.

The Government is thus brought into direct official relation with more than 600 men learned in American history, and has called upon this association to do for history what the National Academy of Sciences has for many years done for philosophy and natural history.

By this incorporation act the Government has also brought itself in touch with every State and local historical society. One of the most valuable of the papers printed in the annual reports has been an exhaustive bibliography, including nearly 10,000 titles of books and pamphlets published by the historical societies of the United States during the last hundred years, a mass of information covering almost every phase of American history. Our association during its first decade just completed has published 10 volumes of "Papers" and "Reports," aggregating 5,192 pages of valuable historical material, one-half of it issued under the auspices of the United States Government.

The real national work of the American Historical Association has but just begun. Never before was there such patient investigation concerning the details of early American

history. The history of individuals is sought for as well as of communities and States. Through the several committees of the association valuable information may be gathered and officially submitted to the Government in our annual reports, information on the progress made by the 250 historical societies of the country, on the work of States and communities in erection of historical memorials, on the present condition of the manuscript records of the States, counties, and towns throughout the land, on the work of the patriotic societies in the development of American history, and most important information as to the manuscript records of national interest now in possession of societies or individuals. The time may be ripe, too, for this association to prepare a complete, classified, and fully indexed analytical bibliography of all works in manuscript or print, in English or foreign tongues, that concern the history of this great nation.

APPENDIX.

List of the manuscript volumes in the Department of State containing the records and papers of the Revolution.

[From Senate Ex. Doc. No. 22, 53d Cong., 3d session.]

Original or "rough" Journal of Congress, from the meeting of the Congress in the Carpenter's Hall, Philadelphia, September 5, 1774, to March 2, 1789. In 39 volumes, folio. (Volume 15 of this series, from March 19 to May 2, 1778, is missing.)

Secret domestic Journal of Congress, from May 10, 1775, to October 26, 1787. In 1 volume, folio.

Secret Journal of Congress, foreign and domestic, from October 18, 1780, to March 29, 1786. In 1 volume, folio.

Secret Journal of foreign affairs, from November 29, 1775, to September 16, 1788. In 3 volumes, folio.

Secret Journal (imperfect) of Congress, from September 17, 1776, to September 16, 1788. In 3 volumes, folio.

Journal of Congress, called "the more secret journal," from June 6, 1781, to August 8, 1782. Small 4to.

Secret Journal A, from 1776 to 1783. (The contents of this volume appear to be merely minutes of proceedings which were afterwards entered on the public journal.) In 1 volume, folio.

History of the Confederation from July 21, 1775, to March 1, 1781. In 1 volume, folio.

Journal of the Committee of the States, with a rough draft of part of their proceedings, from June 4, 1784, to August 19, 1784. In 1 volume, folio.

Book of Estimates, with accounts of receipts and expenditures from April 18, 1781, to October 1, 1786. In 1 volume, folio.

Letter books of the President of Congress (Henry Laurens), containing official letters from November 1, 1777, to December 8, 1778. In 2 volumes, folio.

Letters of the Presidents of Congress (John Jay and Samuel Huntington), from December 11, 1778, to May 19, 1780. In 1 volume, folio.

Letters of the President of Congress (Samuel Huntington), from May 19, 1780, to May 28, 1781. In 1 volume, folio.

Letter books of the Presidents of Congress (embracing a part of the time of service of Samuel Huntington, Thomas McKean, John Hanson, Elias Boudinot, Thomas Mifflin, Richard Henry Lee, and Arthur St. Clair), from May 28, 1781, to August 9, 1787. In 1 volume, folio.

General index to the papers of Congress (embracing letters of Charles Thomson and reports of committees on various subjects). (This index is so very incomplete that it is practically useless.)

Letter books (A and B) of Charles Thomson, Secretary of Congress, containing the record of official letters from November 20, 1779, to May 1, 1789. In 2 volumes, folio.

Reports of committees on "State Papers." (Letters from governors of States to the President of Congress from 1777 to 1788.) In 2 volumes, folio.

Reports of committees relating particularly to Congress, the household of the President, and qualifications of Delegates. In 1 volume, folio.

Reports of committees on increasing the power of Congress, trade, embargoes, and recommendations to the States, and fasts, and thanksgiving proclamations. In 1 volume, folio.

Reports of committees relating to the Department of Foreign Affairs, from 1776 to 1788. In 2 volumes, folio.

Reports of committees on Treasury and finance, from 1776 to 1788. In 1 volume, folio.

Reports of committees on Indian affairs and lands in the Western Territory, from 1776 to 1788. In 1 volume, folio.

Reports of committees of the States and of the week, from 1781 to 1785.

Report of a committee appointed to state the public debt in 1781; estimate of expenses. In 1 volume, folio.

Letter from the Comptroller of the Treasury and claims of Canadian refugees, with reports thereon, from 1783 to 1786. In 1 volume, folio.

Motions made in Congress from 1777 to 1788. (The yeas and nays are frequently recorded.) In 4 volumes, folio.

Reports of the Marine Committee and Board of Admiralty from 1776 to 1780. In 1 volume, folio.

Reports of committees and papers relative to the New Hampshire grants, from 1776 to 1784. In 2 volumes, folio.

Claims for captured vessels by privateers, from 1777 to 1784.

Proposals to Congress relative to locating the seat of Government; proposals for printing the journal of Congress from 1783 to 1785. In 1 volume, folio.

Articles of Confederation, with plans and drafts of treaties from 1775 to 1784. (This volume contains the first drafts of a confederation by Franklin and Dickinson.) In 1 volume, folio.

Memorials of the inhabitants of Illinois, Kaskaskias, and Kentucky. 1780 to 1785. In 1 volume, folio.

Letters and papers of Charles Thomson, from 1781 to 1789. (Drafts and miscellaneous papers of the office of the Secretary of Congress.) In 1 volume, folio.

Letters and papers of Oliver Pollock, from 1777 to 1782. (His early correspondence with the Secret Committee is preserved in this volume.) In 1 volume, folio.

"Intercepted" letters, bearing date from 1775 to 1781. (These volumes contain letters from zealous loyalists and others.) In 2 volumes, folio.

Papers relative to the trial of counterfeiters in New York while held by the British in 1783. In 1 volume, folio.

Papers and accounts of Silas Deane, Beaumarchais, and Arthur Lee. In 1 volume, folio.

Letters and papers of Thomas Paine, from 1779 to 1785. (This volume also contains some papers of the office of Secretary of Congress.) In 1 volume, folio.

Letters and papers relative to Indian affairs, from 1765 to 1789. In 1 volume, folio.

Letters of John Hancock, from 1776 to 1777. (This volume contains other papers of a miscellaneous character.) In 1 volume, folio.

"Miscellaneous papers," from 1770 to 1789. (These volumes contain a variety of interesting and valuable memoranda and papers of the office of the Secretary of Congress, and others impossible to enumerate here.) In 4 volumes, folio.

Letters and papers of R. Bache and E. Hazard, Postmasters-General, 1777 to 1788. In 1 volume, folio.

New Hampshire and Rhode Island State papers, from 1775 to 1788. (Series of official letters from the committees of safety of the respective States and continuations by the governors thereof.) In 1 volume, folio.

Massachusetts State papers, from 1775 to 1787. In 2 volumes, folio.

Connecticut State papers, from 1775 to 1789. In 2 volumes, folio.

New York State papers, from 1775 to 1788. In 2 volumes, folio.

New Jersey State papers, from 1775 to 1788. In 1 volume, folio.

Pennsylvania State papers, from 1775 to 1781. In 2 volumes, folio.

Maryland and Delaware State papers, from 1775 to 1789. In 1 volume, folio.

Virginia State papers, from 1775 to 1789. In 2 volumes, folio.

North and South Carolina State papers, from 1776 to 1788. In 1 volume, folio.

Georgia State papers, from 1777 to 1788. In 1 volume, folio.

Acts of New Hampshire and Massachusetts, from 1776 to 1786. In 1 volume, folio.

Acts of Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia, from 1775 to 1786. In 1 volume, folio.

Acts of North and South Carolina and Georgia, from 1775 to 1788. In 1 volume, folio.

Papers relative to claims of territory by Pennsylvania and Connecticut, from 1780 to 1785. In 1 volume, folio.

Letters of the Committee of Foreign Affairs and of R. R. Livingston, the first Secretary for Foreign Affairs, from 1776 to 1783. In 3 volumes, folio.

Letters of John Jay, Secretary for Foreign Affairs, from 1785 to 1788. In 3 volumes, folio.

Reports of John Jay, from 1785 to 1787. (These reports were submitted "to the wisdom of Congress" for final determination.) In 3 volumes, folio.

Official letters from Dr. Benjamin Franklin, minister plenipotentiary to the Court of France, to the President of Congress, and to Robert R. Livingston, Secretary for Foreign Affairs. In 3 volumes, folio, with an appendix containing intelligence communicated to Dr. Franklin in France and transmitted by him to Congress.

Letters from Arthur Lee (at Paris, Berlin, and Madrid) concerning his negotiations separately and in conjunction with Dr. Franklin and Silas Deane; also his correspondence on the subject of his controversies with them. In 2 volumes, folio.

Letters of John Adams (Paris, Amsterdam, The Hague, and London). In 6 volumes, folio.

Letters from the joint commissioners, Benjamin Franklin, Silas Deane, and Arthur Lee, and John Adams, John Jay, and Henry Laurens. In 1 volume, folio.

Letters from the joint commissioners "for the formation of treaties of amity and commerce" (Benjamin Franklin, John Adams, and Thomas Jefferson). In 1 volume, folio.

Official letters from Thomas Jefferson, minister plenipotentiary to the Court of France, to Congress and to the Secretary for Foreign Affairs (John Jay). (Most of the correspondence of 1787 is missing.) In 2 volumes, folio.

Official letters of William Carmichael, in his association with the American ministers and as secretary of legation and chargé d'affaires at the Court of Spain, etc. In 1 volume, folio.

Letters of Ralph Izard, commissioner of the United States at the court of the Grand Duke of Tuscany; John Jay, minister plenipotentiary of the United States to Spain; Henry Laurens, minister plenipotentiary of the United States to Holland, and Francis Dana, minister plenipotentiary of the United States to Russia. In 1 volume, folio.

Letters of William Bingham, agent of the United States at Martinique; Samuel Parsons (Parsons, Alston & Co.), William Lee, and Jonathan Williams. In 1 volume, folio.

Letters of Thomas Barclay, consul-general of the United States of America in France, commissioner to negotiate with Morocco, and commissioner to settle accounts of public agents in Europe; and of John Lamb, commissioner of the United States to negotiate a treaty with Tunis. In 1 volume, folio.

Letters of Col. William Stephens Smith, secretary of legation at London; Richard Harrison, United States consul to Cadiz; John Bonfield, United States consul at Bordeaux; Joseph Gardoqui & Sons, agents of the United States at Bilboa, and of John Temple, consul-general of His Britannic Majesty in the United States. In 1 volume, folio.

Letters of Charles William Frederick Dumas, chiefly from The Hague. (In French.) In 4 volumes, folio.

Letters of Conrad Alexander Gerard, minister plenipotentiary from the Court of France to the United States, to the President of Congress. In 1 volume, folio.

Letters of Cæsar Anne (Chevalier) de la Luzerne, second minister plenipotentiary from the Court of France to the United States. In 2 volumes, folio.

Letters of Jean Holker, agent of marine and consul of the King of France at Philadelphia; Barbé Marbois, chargé d'affaires of France in the United States; M. de la Forest, vice-consul-general of France, and of the Count de Moustier, successor to the Chevalier de la Luzerne. In 1 volume, folio.

Letters of Don Diego de Gardoqui, minister plenipotentiary of Spain (encargado de negocios of His Catholic Majesty) to the United States, chiefly relative to the Spanish negotiations, from 1785 to 1790. In 1 volume, folio.

Papers relative to Barbary, from 1779 to 1792, in French, Spanish, English, and Italian. (Containing lists of presents made by various powers to the regencies, and the correspondence of D'Audibert Caille and of Francisco and Guiseppe Chiappi, consuls in Barbary.) In 1 volume, folio.

Letters of P. J. Van Berckel, minister plenipotentiary of their High Mightinesses the Lords of the States-General of the United Netherlands. (In French and low Dutch, with occasional translations.) In 1 volume, folio.

Transcripts of the letters of Dr. Franklin, from December, 1776, to June, 1785. In 2 volumes, folio.

Transcript of letters of Dr. Franklin and John Adams, from 1781 to 1783. In 1 volume, folio.

Transcript of the letters of Arthur Lee, William Lee, and Ralph Izard, from 1776 to 1780. In 5 volumes, folio.

Transcript of the letters of Silas Deane, 1776 and 1777, and of Arthur Lee, from 1776 to 1779. In 1 volume, folio.

Transcript of the letters of John Adams, 1777 and 1778. In 6 volumes, folio.

Transcript of the letters of the joint commissioners of the United States of America, from 1777 to 1779, and of William Lee and Ralph Izard. In 1 volume, folio.

Transcript of the letters of the joint commissioners for negotiating peace. In 1 volume, folio.

Transcript of the letters of Thomas Jefferson, from May 11, 1785, to August 6, 1787. In 2 volumes, folio.

Transcript of the letters of William Carmichael, from 1776 to 1783. In 1 volume, folio.

Transcript of the letters of Francis Dana, Henry Laurens, and John Laurens. In 1 volume, folio.

Transcript of the letters of John Jay, from December, 1779, to July, 1784. In 3 volumes, folio.

Transcript of the letters of the Sieur (Conrad Alexander) Gerard, first minister plenipotentiary from France to the United States, 1778 to 1779. (In French.) In 1 volume, folio.

Transcript of the letters of the Chevalier de la Luzerne, from 1779 to 1782, with the action of Congress thereon and various reports of committees. In 1 volume, folio.

A second transcript of the above letters and resolves, from 1779 to 1782, and continued to 1783. In 1 volume, folio.

Record of correspondence with the French minister, 1778 and 1779. (The commencement of this volume is in the handwriting of Charles Thomson, and has much of the character of a journal.) In 1 volume, folio.

Transcript of letters of C. W. F. Dumas, from 1776 to 1778. In 1 volume, folio.

Letter book of the joint commissioners for the formation of treaties of peace. In 1 volume, folio.

Record of the instructions of Thomas Barclay and John Lamb. In 1 volume, folio.

Transcript of the official letters of Robert R. Livingston, first Secretary for Foreign Affairs, from October 20, 1781, to May 31, 1783. (These records are called "foreign letters," from having been addressed for the most part to ministers of the United States abroad.) In 1 volume, folio.

Transcript of the official letters of Robert R. Livingston, from October 20, 1781, to June 2, 1782. (These records are called "domestic letters," having been addressed to persons within the United States.) In 1 volume, folio.

Record of letters of the office of the Department of Foreign Affairs (called "American letters"), from 1785 to 1792. In 4 volumes, folio.

Record of letters of the office of the Department of Foreign Affairs (called "foreign letters"), from January, 1785, to December, 1790. In 1 volume, folio.

"Resolve Book" of the Office of Foreign Affairs, containing the resolutions of Congress relating to foreign affairs from 1785 to 1789.

"Resolve Book," containing motions and resolves of Congress from February 9, 1785, to May 16, 1786, chiefly in reference to the Office of Secretary of Foreign Affairs and of the Treasury Board.

Transcript of the reports of the Secretary for Foreign Affairs from 1785 to 1789. In 3 volumes, folio.

"Negotiation Book." A record of the correspondence between Mr. Jay and Don Diego de Gardoqui from May, 1785, to October, 1789. In 1 volume, folio.

Daily Journal, or "Despatch Book," of the Office of Foreign Affairs from 1781 to 1783 (Mr. Livingston's administration). In 1 volume, folio.

Daily Journal, or "Despatch Books," of the Office of Foreign Affairs from 1784 to 1790 (Mr. Jay's administration). In 2 volumes, folio.

A record of the commissions of foreign consuls from 1778 to 1787. In 1 volume, folio.

A record of the commissions of foreign ministers, consuls, and agents. In 1 volume, folio.

A record of "passports," or sea letters, granted under the "Old Government," containing applications and evidence for sea letters. In 1 volume, folio.

A record of bonds taken under the "Old Government" for faithful performance of duty in office. In 1 volume, folio.

Transcript of the letters of John Paul Jones from February, 1778, to December, 1780. In 1 volume, folio.

Letter book of the committee appointed to transact all continental business in the city of Philadelphia in 1776 (committee consisting of Robert Morris, George Clymer, and George Walter). In 1 volume, folio.

Proceedings of the committee appointed to treat with the Six Nations of Indians in 1775. In 1 volume, folio.

Record of treaties and "contracts" between the United States and other powers, and with individuals, from 1783 to 1788. In 2 volumes, folio.

Reports of the Board of Treasury from 1776 to 1781. Arranged chronologically from A to Y. In 2 volumes, folio.

Reports of the Board of Treasury from 1784 to 1789, principally concerning applications from States. In 2 volumes, folio.

Letters from the Board of Treasury, submitting reports and statements of accounts, from 1785 to 1788. In 2 volumes, folio.

Record of accounts of the Register's Office from 1781 to 1783. In 2 volumes, folio.

Papers respecting state of accounts in 1784; returns of ordnance and other stores of the United States. In 1 volume, folio.

Letters, papers, and estimates relating to the Treasury, from 1782 to 1788. In 1 volume, folio.

Letters and papers of bankers in Holland; loans and contracts, 1779 to 1788. In 1 volume, folio.

A register of incidental accounts of the United States from 1785 to 1789.

Record of Indian treaties from 1784 (the treaty of Fort Stanwix) to 1786. In 1 volume, folio.

Record of "ordinances" of Congress, 1781 to 1788. In 1 volume, folio.

Ordinances for the government of the western territory of the United States, 1787 and 1788. In 1 volume, folio.

Returns of the inhabitants of the New England States and New York, with other statistical tables, from 1774 to 1786. In 1 volume, folio.

"Abridged resolves" of Congress from 1777 to 1780. In 2 volumes, folio, with a detached list of resolves of 1775 and 1776.

Records of the credentials of the Delegates to the Continental Congress from 1781 to 1789. In 2 volumes, folio.

Reports of the Secretary of Congress from 1785 to 1788. In 1 volume, folio.

"Memorandum book for 1783."

"Book of forms of commissions, etc."

List of letters, memoranda, and notes of the office of finance.

"Alphabetical list of officers who have taken the oath of allegiance."

"Despatch Books," containing lists of letters received from 1779 to 1789. In 4 volumes, folio.

"A committee book;" memoranda of dates of reports of committees, 1782 to 1785.

"Memorandum of letters, papers, and journals delivered from the office of the Secretary of Congress, 1786–1789" (and in continuation from the Department of State, 1795).

"A record of the reports of committees of Congress on the five Executive Departments, 1782–1785." (Unfinished.) Folio.

"Lists of reports of committees (of Congress) from 1786 to 1788."

"Lists of reports of committees (of Congress) from 1785 to 1788."

"Minutes of reports of committee from 1781 to 1785."

"Miscellaneous papers, being a collection of letters and memoranda of the period 1775–1783." To form 2 volumes, folio.

XXIX.—BIBLIOGRAPHY OF THE COLONIAL HISTORY OF SOUTH CAROLINA.

By EDSON L. WHITNEY.

The following bibliography is confined to the colonial period of South Carolina. It includes all books relating to South Carolina which contain matter in reference to the colonial period. A few other books have been inserted which contain matter not generally found in the histories of South Carolina. The histories of North Carolina, Georgia, and Florida contain many references to colonial South Carolina, but with few exceptions they have been omitted, as well as general histories of the United States and of the colonies:

ABERCROMBIE, JAMES. A Collection of Instructions, Orders, and other Miscellaneous Papers, relating to the Several Governments belonging to the Crown of Great Britain in North America. MS. 1740–1760.

ABRIDGEMENT of the Laws in Force and Use in Her Majesty's Plantations: Of Virginia, New England, Jamaica, New York, Barbadoes, Carolina, Maryland, &c. London, 1704.

ACCOUNT of the Fair and Impartial Proceedings of the Lords Proprietors, Governor, and Council of the Colony of South Carolina in Answer to the Untrue Suggestions contained in the Petition of Joseph Boon and Others, and of a Paper intitled "The Case of the Church of England in Carolina." London, 1706.

In relation to the church act of 1704.

ACCOUNT of the Invasion made by the French and Spaniards upon Carolina * * * in 1706. Charleston.

This account is taken from the records in the state paper office, London, and is printed in Russell's Magazine, August, 1859, pp. 458–464.

ACCOUNT of the Province of Carolina in America.

See Samuel Wilson.

ADAIR, JAMES. History of the American Indians, Particularly those Nations adjoining to the Mississippi, East and West Florida, Georgia, South and North Carolina, and Virgina. London, 1775.

German translation at Breslau, 1782.

ADDRESS of the Dissenters to his Excellency John Lord Granville, May 10, 1704.

Seventh appendix in the Case of Protestant Dissenters, pp. 41–42. In relation to the church act of 1704.

AGRICULTURAL Report of South Carolina.

See Harry Hammond.

ANNALS and Parish Register of St. Thomas and St. Denis Parish, S. C. Charleston, 1884.

A brief chronological history of the parish.

ANSWER to Considerations on Certain Political Transactions of the Province of South Carolina. London, 1774.

An answer to Leigh's pamphlet.

ARCHDALE, JOHN. A New Description of that Fertile and Pleasant Province of South Carolina. London, 1707.

Reprinted in Carroll's Historical Collections, Vol. II. There is also another reprint at Charleston, 1822, by A. E. Miller, with an appendix, entitled "Notices of the Early History of South Carolina." Archdale had been governor of the colony, 1695–96, and his Description is an account of what he saw and learned when in the colony. His historical statements do not always agree with the facts.

ASH, JOHN. The Present State of Affairs in Carolina, Sent by Several of the Inhabitants of that Colony to deliver their Representation thereof to, and seek Redress from, the Lords Proprietors of that Province; Together with an Account of his Reception by the Honorable the Lord Granville, their President or Chief of the Proprietors. N. p., 1703.

Reprinted as the fourth appendix in the Case of Protestant Dissenters, pp. 24–29.

A[SH], T[HOMAS]. Carolina; or a Description of the Present State of that Country. London, 1682.

Reprinted in Carroll's Historical Collections, Vol. II. A description of the colony, with a few general historical statements. Ash had been clerk on board a vessel which had recently visited South Carolina. His Description therefore is what he saw and learned during a short sojourn there.

ASTIÉ, J. F. Histoire de la République des États-Unis. 2 vols. Paris, 1865.

Devoted entirely to the colonial period. South Carolina is treated at length in Vol. II.

AUSFÜHRLICHE Beschreibung von der unglücklichen Reise.

See M. W. Hoën.

BANVARD, JOSEPH. Romance of American History, as Illustrated in the Early Events Connected with the French Settlement at Fort Carolina, the Spanish Colony at St. Augustine, and the English Plantation at Jamestown. Boston, 1852.

New edition, 1880, with first four words of title changed to Southern Explorers and Colonists.

BARTRAM, WILLIAM. Travels through North and South Carolina, Georgia, East and West Florida, etc. Philadelphia, 1791.

The travels were made in the years 1773–1777. Reprinted at London, 1792, and Dublin, 1793. Second edition, London, 1794. French translation at Paris, 1799; also 1801, in two volumes. German translation at Berlin, 1793. Dutch translation at Haarlem, 1794–1797, in three parts.

BASKERVILLE, WILLIAM M. Southern Literature. Baltimore, 1892.

In the Transactions and Proceedings of the Modern Language Association of America, Vol. VII, pp. 89–100. Contains several references to colonial South Carolina.

BASSETT, J. S. Constitutional Beginnings of North Carolina (1663–1721). Baltimore, 1894.

Johns Hopkins University Studies in Historical and Political Science, March, 1894, Vol. XII, No. 3. Many of his statements, especially those in relation to the Fundamental Constitutions, apply equally well to South Carolina.

BERNHEIM, G. D. History of the German Settlements and of the Lutheran Church in North and South Carolina. Philadelphia, 1872.

Bernheim had been pastor of Lutheran churches in both Carolinas for many years, and in writing his book had access to the records of all existing Lutheran churches and synods. Although a carefully prepared book, it can not always be blindly followed, for Bernheim's connection with the Lutheran denomination led him to claim too many Reformed churches as Lutheran, while his knowledge of early Carolina history was apparently obtained from secondary sources of doubtful value. Other books containing an account of Lutherans in South Carolina are: Wolf's Lutherans in America; Schaeffer's Lutheran Church in America; Hazelius' History of the American Lutheran Church; Jacobs's History of the Evangelical Lutheran Church in the United States; Stoever's Sketch of the Evangelical Lutheran Church in America.

BOLZIUS, JOHN MARTIN. An Extract of His Journals. London, 1734.

Reprinted in Force's Historical Tracts, Vol. IV, No. 5. German translations at Halle, 1774, and at Hamburg, 1777. Relates to South Carolina and Georgia.

BOSTON NEWS. Boston.

Colonel Moore's account of his expedition against St. Augustine is given in the number for May 1, 1704; an account of the outbreak of the Yemassee war is given in the number for June 13, 1715. Both are reprinted in Carroll's Historical Collections.

BREVARD, JOSEPH. An Alphabetical Digest of the Public Statute Law of South Carolina. 3 vols. Charleston, 1814.

This includes all statutes deemed by the compiler to be in force in South Carolina, whether passed by the South Carolina Assembly, the British Parliament, or the United States Congress.

BRISBANE, A. H. Ralphton; or, the Young Carolinian of 1776. Charleston, 1848.

A novel containing a few references to colonial South Carolina.

BROWNE, E. C. L. Historical Sketch of the Second Independent or Congregational (Unitarian) Church of Charleston.

Printed in the Charleston Year Book for 1882.

BUCKINGHAM, JAMES SILK. The Slave States of America. 2 vols. London, 1841.

Contains a history of Charleston and South Carolina. Descriptions of colonial slavery are also to be found in Benezet's Caution to Great Britain and Her Colonies, in a Short Representation of the Calamitous State of the Enslaved Negroes in the British Dominions, Stroud's Sketch of the Laws Relating to Slavery, and Volume I of Draper's History of the American Civil War.

BURNABY, ANDREW. Travels through the Middle Settlements in North America in the Years 1759 and 1760. With Observations upon the State of the Colonies. London, 1775.

Second edition, London, 1775, and Dublin, 1775. Third edition, London, 1798. Reprinted in Pinkerton's Voyages, Vol. XIII. German translation, Hamburg and Kiel, 1776. French translations at Lausanne and The Hague, 1778.

BURRAGE, HENRY S. Rev. Mr. Screven. Portland.

In Collections and Proceedings of the Maine Historical Society, January, 1890, pp. 45–56, and July, 1894, pp. 275–284. Screven led the first colony of Baptists into South Carolina from Kittery, Me., in 1683.

CADOGAN, GEORGE. The Spanish Hireling Detected. London, 1743.

An attempt to show that General Oglethorpe mismanaged the expedition against St. Augustine in 1740.

CARDOZO, ISAAC N. Reminiscences of Charleston. Charleston, 1866.
Contains several interesting references to the colonial period.

CAROLINA Described more fully than Heretofore. Dublin, 1684.
Contains the charter and the Fundamental Constitutions in an appendix.

CARROLL, B. R. [Compiler.] Historical Collections of South Carolina; Embracing many Rare and Valuable Pamphlets, and Other Documents, Relating to the History of that State, from its Discovery to its Independence in the year 1776. 2 vols. New York, 1836.
Volume I includes Hewatt's Account of South Carolina and Georgia. Volume II includes the following: A Brief Description of the Province of Carolina, on the Coasts of Floreda; Wilson's Account of Carolina; the second charter; Ash's Description of the Present State of Carolina; Archdale's Description of South Carolina; Purry's Description of Carolina; Yonge's Narrative of the Proceedings of the People of South Carolina in the Year 1719; Glen's Description of South Carolina; the chapter in Chalmers's Political Annals of the United Colonies which relates to Carolina; the introduction to the Report of the Committee, on the St. Augustine Expedition under General Oglethorpe; the second set of the Fundamental Constitutions; the chapter from Oldmixon's British Empire in North America which relates to Carolina; Milligan's Description of South Carolina; the chapter from Humphreys's History of the Society for the Propagation of the Gospel in Foreign Parts which relates to South Carolina; an article from the Boston News, June 13, 1715, containing an account of the breaking out of the Yemassee war of 1716, and a letter from Colonel Moore to the governor of South Carolina giving an account of his expedition against the Spaniards, which also had appeared in the Boston News, May 1, 1704. The whole is prefaced by an account of the early history of South Carolina.

CASE of the Church of England in Carolina, humbly offered to the Consideration of both Houses of Parliament; with Resolves of the House of Lords. London, n. d.
Refers to the church act of 1704.

CASE of the Rev. Mr. Edward Marston, Minister of the Church belonging to the Church of England in Charles Town in South Carolina, truly stated. London, 1705.
Reprinted as the fourteenth Appendix of the Case of Protestant Dissenters, pp. 65–67. A protest against his persecution by the assembly for attempting to live on friendly terms with the Dissenters.

CASE of Mr. Edward Marston, late Minister of the Church of St. Philip in Charles Town in the Province of South Carolina, as represented by himself in a Letter to the Duke of Beaufort, Palatine of the Province, and other Honourable Gentlemen. N. p., 1712.
Similar to the preceding.

CASE of Protestant Dissenters in Carolina. London, 1706.
The Appendix, which was drawn up by John Ash, contains the first charter; the Fundamental Constitutions of 1670 and 1698; Ash's Present State of Affairs in Carolina; the Representation and Address of the members of assembly for Colleton County, etc., to his Excellency John Grenville; an act for the more effectual preservation of the government, May 6, 1704; an Address of the dissenters to his excellency John, Lord Granville, May 10, 1704; letter of Mrs. Blake, widow of the late governor, to the proprietors, May 16, 1704; a petition of several merchants trading to Carolina; the church act of November 4, 1704, and three documents respecting the persecution of the Rev. Edward Marston, rector of the Church of St. Philip's, Charleston, viz.: Letter to the Bishop of London, Humble Petition to the Palatine, and his Case Truly Stated.

CATESBY, MARK. The Natural History of Carolina, Florida, and the Bahama Islands. London.

The first edition appeared in parts, 1731-1748; the second edition in two volumes, 1754; the third in two volumes, 1771. They are printed in both French and English and embellished with large pictures in colors of all species of animal life found in the colonies named. An edition appeared at London in two volumes, 1751, with a French title. German editions appeared at Nuremburg, 1750, 1755, 1757, and 1770, and with Latin title in 1750 and 1777. The translations generally omit parts of the original.

CHALMERS, GEORGE. [Compiler.] Opinions of Eminent Lawyers on Various Points of English Jurisprudence. 2 vols. London, 1814.

Reprinted, Burlington, Vt., 1858, in one volume. Several of these opinions relate directly to South Carolina.

CHALMERS, GEORGE. Political Annals of the United Colonies. London, 1780.

This volume concluded with the year 1688. A second volume, printed from Chalmers's manuscript in the library of the New York Historical Society, was published as the first volume of that society's collections in 1868. It covers the years 1688-1696. The chapter in the first volume relating to Carolina is reprinted in Carroll's Historical Collections.

CHALMERS, GEORGE. An Introduction to the History of the Revolt of the Colonies. London, 1782.

This volume, which covered the period to 1728, was suppressed by the British ministry. It was reprinted at Boston, 1845, edited by John Langdon Sibley, who added a second volume from a manuscript continuation left by Chalmers, covering the period to 1760. Chalmers was secretary of the board of trade during the last years of its existence. His facts, therefore, are reliable, but his conclusions are most wilfully distorted, as his object in writing these books was to prove that the colonists aimed at independence immediately upon arrival in America.

CHALMERS, LIONEL. An Account of the Weather and Diseases of South Carolina. 2 vols. London, 1776.

A German translation in two volumes appeared at Stendal, 1796.

CHALMERS, LIONEL. Essay on Fevers. Charleston, 1767.

Reprinted London, 1768.

CHARLESTON Year Books. Charleston.

These annual publications, which began in the year 1880, contain the annual reports of the various departments of the city, with appendices containing copies of rare old documents and articles relating to Charleston local history, written generally by prominent residents of Charleston. The report for 1880 contains a sketch of the history of Charleston, by J. J. Pringle Smith; that of 1881, sketches of the government of Charleston, by J. J. Pringle Smith, and of the Baptist Church, by E. H. Shuck; 1882, sketches of the Unitarian Church, by E. C. L. Browne; of the Congregational Church, by A. H. Missildine, and of the Presbyterian Church, by W. T. Thompson; 1884, Hilton's Relation and a sketch of the Lutheran Church, by E. T. Horn; 1885, Sandford's Relation; a sketch of the French Church, by C. S. Vedder, and a historical account of the administration of justice in South Carolina, by H. A. M. Smith; 1886, a sketch of St. Michael's Church, by G. S. Holmes. A full account of the anniversary proceedings of 1883 is bound with the report for 1883 and is also bound separately. The reports also contain several articles with references to the colonial period. The reports since 1886 contain but little upon the colonial period.

CHARLESTON Library Society, Catalogue of Books belonging to the. Charleston, 1770.

Many later editions. The rules and by-laws of the society and the act of incorporation are bound with the catalogues; also issued separately.

CHARTERS, The Two, Granted by King Charles II to the Proprietors of Carolina, With the First and Last Fundamental Constitutions of that Colony. London, n. d.

COLONIAL era of South Carolina. New Orleans.
Printed in the Southern Quarterly Review for July, 1844, pp. 130-163.

COLUMBIA Board of Trade, Columbia, S. C. Columbia, 1871.

CONDY, THOMAS D. A Digest of the Laws of the United States and the State of South Carolina now in force relating to the Militia, with an Appendix containing the Patrol Laws; the Laws for the Government of Slaves and Free Persons of Colour; the Decisions of the Court of Appeals of South Carolina thereon; and an Abstract from the Rules and Regulations of the United States Army, etc. Charleston, 1830.

CONSIDERATIONS on Certain Political Transactions of the Province of South Carolina.
See Sir Egerton Leigh.

COOPER, THOMAS. [Editor.] Statutes at Large.
See Statutes at Large of South Carolina.

CORRESPONDENCE of Ralph Izard.
See Anne Izard Dees.

COWLEY, CHARLES. The Romance of History in "The Black County." Lowell, Mass., 1882.
A brief sketch of Beaufort County, containing several references to the colonial period.

COXE, DANIEL. A Description of the English Province of Carolina. London, 1722.
Later editions appeared in 1727 and 1741 under slightly different titles. It is also the third volume of Coxe's Collection of Voyages and Travels. London, 1741. Reprinted St. Louis, 1840. Also in French's Historical Collections of Louisiana, Vol. II, 1847. An appendix contains the Charter to Heath. It is based on notes made by the writer's father and therefore is not always safe to follow.

[CRAFFORD, JOHN.] A New and Most Exact Account of the Fertile and Famous Colony of Carolina. Dublin, 1683.

CRAFTS, WILLIAM A. Pioneers in the Settlement of America. 2 vols. Boston, 1876.
Contains several stories of colonial South Carolina life.

CUMBERLAND, RICHARD. Letters to Roger Pinckney, his Deputy, with Regard to the Provost Marshalship of South Carolina, 1764-1775.
Printed in Weston's Documents.

DALCHO, FREDERICK. An Historical Account of the Protestant Episcopal Church in South Carolina, from the First Settlement of the Province to the War of the Revolution. Charleston, 1820.
Dalcho was assistant rector of St. Michael's, Charleston, and his professed object in writing his book was to preserve facts relating to the early history of the church. He had access to all records then in existence, and his book is a perfect mine of information, being remarkably free from errors and sectarian bias. Other books giving a sketch of Episcopacy in colonial South Carolina are: Anderson's History of the Church of England in the Colonies, in three volumes; Hawkins, Historical Notices of the Missions of the Church of England in the North American Colonies; McConnell, History of the American Episcopal Church from the Planting of the Colonies; Perry, The History of the American Episcopal Church, 1587-1883, in two volumes; and volume 1 of the Protestant Episcopal Historical Society Collections.

DAVIDSON, JAMES W. School History of South Carolina. Columbia, 1869.

DAVIS, R. MEANS. A Sketch of Education in South Carolina.
Printed in Hammond's Report, pp. 445–549. Includes a brief sketch of the colonial period.

DE BOW, JAMES D. B. The Industrial Resources, etc., of the Southern and Western States. 3 vols. New Orleans, 1852–53.
Third edition, New York, 1854, in one volume. Contains among other articles a historical sketch of South Carolina; also an article on the slave laws of South Carolina, by J. B. O'Neall.

DE BOW, JAMES D. B. The Political Annals of South Carolina. Charleston, 1845.
Prepared for the Southern Quarterly Review.

DE BRAHM, JOHN GERAR WILLIAM. History of the Three Provinces, South Carolina, Georgia, and East Florida.
This book, which exists only in manuscript and is in the Harvard College library, bears the date of 1771. Various parts have been printed at different times. The part relating to South Carolina has been printed in Weston's Documents under the title of Philosophico-Historico-Hydrogeography of South Carolina. De Brahm was a royal surveyor and visited all parts of the three colonies named. His accounts of what he saw are doubtless fairly correct, but his historical statements are apparently based upon hearsay, as many are far from accurate. G. W. Jones printed the part relating to Georgia in 1849.

DEES, ANNE IZARD. [Editor.] Correspondence of Mr. Ralph Izard, of South Carolina, from the Year 1774 to 1804, with a Short Memoir. New York, 1844.
Only one volume was published, and that ended with the year 1777.

[DE FOE, DANIEL.] Party Tyranny. London, 1705.
A protest against the church act of 1704. Reprinted in Saunders's North Carolina Colonial Documents, II, 831–923.

DESCRIPTION of South Carolina.
See James Glen.

DISCOURSES and Proceedings at the Dedication of the Remodelled Unitarian Church, Charleston, South Carolina. Charleston, 1854.
Mainly historical.

DOYLE, J. A. The English in America. 3 vols. London, 1882–1887.
Reprinted, New York. The first volume deals with Virginia, Maryland, and the Carolinas to 1700.

DRAYTON, JOHN. Memoirs of the American Revolution * * * as Relating to the State of South Carolina. 2 vols. Charleston, 1821.
Contains much original material relating to the years immediately preceding the Revolution.

DRAYTON, JOHN. A View of South Carolina, as Respects Her Natural and Civil Concerns. Charleston, 1802.
A German translation was published at Weimar, 1808, as a part of vol. 35 of the Bibliothek der neuen Reisebeschreibungen.

DUBOSE, SAMUEL. Reminiscences of St. Stephen's Parish and Notices of Her Old Homesteads. Charleston, 1856.
See the following.

DUBOSE, SAMUEL, and PORCHER, FREDERICK A. Contributions to the History of the Huguenots of South Carolina. New York, 1887.
Contains an address delivered at the seventeenth anniversary of the Black Oak Agricultural Society, April 27, 1858, with Reminiscences of St. Stephen's Parish and Notices of Her Old Homesteads, by Dubose, and Historical and Social Sketch of Craven County, by Porcher.

EGGLESTON, EDWARD. Articles in the Century Magazine. New York, 1882–1885.

The following articles contain references to South Carolina: Migrations of American Colonists, March, 1883; The Aborigines and the Colonists, May, 1883; Indian Wars in the Colonies, September, 1883; Husbandry in Colonial Times, January, 1884; Commerce in the Colonies, June, 1884; Social Conditions in the Colonies, September, 1884; The Colonists at Home, April, 1885; Social Life in the Colonies, July, 1885.

ELLIOTT, STEPHEN. A Sketch of the Botany of South Carolina and Georgia. 2 vols. Charleston, 1821, 1824.

Originally published in thirteen numbers, the first appearing in 1816. Some bear the imprint "Philadelphia, 1821."

EXTRACTS from the Proceedings of the High Court of Vice-Admiralty in Charles Town.

See Henry Laurens.

F., R. The Present State of Carolina, with Advice to the Settlers. London, 1682.

FLEMING, W. S. Scotch-Irish Settlers in South Carolina and their Descendants in Maury County, Tennessee. Cincinnati, 1889.

In Proceedings of the Annual Congress of the Scotch-Irish Society of America, 1889, pp. 202-210.

FOOTE, WILLIAM H. The Huguenots, or Reformed French Church. Richmond, 1870.

Contains two chapters on South Carolina.

FORCE, PETER. [Compiler.] Tracts and Other Papers, Relating Principally to the Origin, Settlement, and Progress of the Colonies of North America. 4 vols. Washington, 1836–1846.

Among other documents, Volume I contains the Humble Memorial from the Assembly of South Carolina, 1734; Volume II contains Purry's Description of Carolina and Yonge's Narrative of the Proceedings of the People of South Carolina, in the year 1719; Volume IV contains Hilton's Relation and Extracts from the Journals of Von Reck and Bolzius.

FRASER, CHARLES. Reminiscences of Charleston. Charleston, 1854.

Revised and enlarged from the Charleston Courier.

FRENCH Protestant Church of Charleston, South Carolina, Liturgy. New York, 1853.

Contains a sketch of the Huguenot settlements in South Carolina.

FULL AND PARTICULAR Account of an Invasion made by the French and Spaniards upon South Carolina; with the Disappointment and Disgrace They Met with in It. London, 1706.

FULL REPLY to Lieutenant Cadogan's "Spanish Hireling."

See James Oglethorpe.

FULL STATEMENT of the Dispute betwixt the Governor and the Commons House of Assembly of His Majesty's Province of South Carolina, in America; with the Proper Vouchers and Reasons in Support of the Proceedings of the House of Assembly, as transmitted to their Agent in Great Britain. n. p. 1763.

FURMAN, J. C. Centennial Address at the Bi-Centennial of the First Baptist Church of Charleston. n. p. n. d.

FURMAN, WOOD. A History of the Charleston Association of Baptist Churches in the State of South Carolina. Charleston, 1811.

A small book containing an account of the early Baptists in South Carolina. Other books giving an account of the early Baptists in South Carolina are Armitage, History of the Baptists; and Benedict, a General History of the Baptist Denomination in America.

GAFFAREL, PAUL. Histoire de la Floride Française. Paris, 1875.

The appendix contains many rare and valuable documents. The book contains an account of the settlements in Carolina and Florida previous to 1680.

GAILLARD, THOMAS. Names of the Huguenot Refugees Who Emigrated to South Carolina. New York, 1884.

Printed in Proceedings of the Huguenot Society of America, Vol. I, No. 1, pp. 53, 54.

GENTLEMAN'S MAGAZINE. London.

The number for March, 1740, pp. 127, 128, has a letter in regard to the slave insurrection of 1739. A letter from H. Mackay in regard to the St. Augustine expedition is printed in the number for November, 1740, p. 515. Purry's Description of South Carolina is printed in the numbers for August, September, and October, 1732, pp. 894-896, 969, 970, and 1017-1019.

GLEN, JAMES. Answers to Queries from the Lords Commissioners for Trade and Plantations.

Printed in Weston's Documents. The answers were made in the year 1749.

[GLEN, JAMES.] A Description of South Carolina. London, 1761.

Reprinted in Carroll's Historical Collections, Vol. II. The Description is based upon the Answers and therefore shows the condition of South Carolina in 1748 and not in 1760.

GREGG, ALEXANDER. History of the Old Cheraws, 1730-1810. New York, 1867.

A history, real and legendary, of Chesterfield and Darlington counties and their immediate neighborhood.

GRIMKÉ, JOHN F. [Compiler.] The Public Laws of the State of South Carolina. Philadelphia, 1790.

A collection of such laws as the compiler deemed in force in 1790, with the titles of acts expired or repealed.

HAMMOND, HARRY. [Editor.] South Carolina. Resources and Population, Institutions and Industries. Charleston, 1883.

Published by the State Board of Agriculture. Contains several short reports written by various persons on fauna, vertebrates, institutions, government, laws, education, transportation, towns, population, climate, physical features, etc., of South Carolina.

HARTLEY, CECIL B. Heroes and Patriots of the South. Philadelphia, 1860.

Reprinted as The Life of General Francis Marion: Also, Lives of Generals Moultrie and Pickens, and Governor Rutledge. Philadelphia, 1866.

HAWKS, FRANCIS L., and PERRY, WILLIAM S. Documentary History of the Protestant Episcopal Church in the United States of America. South Carolina. New York, 1862.

Several volumes have been issued at various times under this general title. Only the first part of the volume relating to South Carolina was published. It consisted mainly of documents written by missionaries of the Society for the Propagation of the Gospel in Foreign Parts between the years 1702 and 1706.

HENRY, WILLIAM W. The Scotch-Irish of the South. Cincinnati, 1889.
In Proceedings of the Annual Congress of the Scotch-Irish Society of America, 1889, pp. 110–131.

[HEWATT, ALEXANDER.] An Historical Account of the Rise and Progress of the Colonies of South Carolina and Georgia. 2 vols. London, 1779.
Reprinted in Carroll's Historical Collections. Relates almost entirely to South Carolina. Hewatt had been pastor of the Presbyterian church in Charleston for several years, but had been obliged to leave the colony because of his extreme Tory views. His account of what came under his observation is in general correct, but his account of the early period is far from accurate.

HILTON, WILLIAM. A Relation of a Discovery lately made on the Coast of Florida, 1663. London, 1664.
Relates entirely to South Carolina. Reprinted in Force's Tracts, Vol. IV, and Charleston Year Book for 1884.

HISTORICAL ACCOUNT of the Rise and Progress of the Colonies of South Carolina and Georgia.
See Alexander Hewatt.

HISTORICAL and Descriptive Review of the State of South Carolina. Charleston, 1884.
A pamphlet issued for the purpose of attracting settlers to South Carolina and containing considerable on the colonial period.

HISTORICAL and Social Sketch of Craven County, South Carolina.
See Frederick A. Porcher.

HISTORICAL MAGAZINE. New York.
The number for November, 1865, pp. 341–347, contains an article on South Carolina just before the Revolution, written by an English traveler there. The article is also printed in the Southern Literary Messenger for March, 1845.

HISTORICAL Manuscripts Commission.
See Royal Commission on Historical Manuscripts.

HOËN, MORITZ W. Ausführlicher Bericht von der berühmten Landschaft Carolina. Frankfurt a. M., 1709.

[HOËN, M. W.] Das verlangte nicht erlangte Canaan, oder ausführliche Beschreibung von der unglücklichen Reise des jüngsthin aus Teutschland nach Carolina und Pensylvanien wandernden Pilgrim, dem übelgegründeten Kocherthalerischen Bericht entgegen gesetzt. Leipzig und Frankfurt a. M., 1711.
Reprinted Hamburg, 1712.

HOLCOMBE, HARRY A. A Sermon, Occasioned by the Death of Mr. Charles Beales, Delivered at Eutaw. Charleston, 1693.

HOLMES, GEORGE S. An Historic Sketch of the Parish Church of St. Michael, 1752–1887.
Printed in Charleston Year Book for 1886. Also printed separately. Charleston, 1887.

HORLBECK, H. B. Maritime Sanitation at Ports of Arrival.
Printed in Charleston Year Book for 1890, pp. 135–158. Half of the paper is given over to the colonial period.

HORN, E. T. Historical Sketch of St. John's Lutheran Church of Charleston.
Printed in Charleston Year Book for 1884.

HOWARD, CHARLES W. A Sermon Delivered at the Re-Opening and Dedication of the French Protestant Church of Charleston, South Carolina, Sunday, May 11, 1845. Charleston, 1845.
Mainly historical.

HOWE, GEORGE. History of the Presbyterian Church in South Carolina. 2 vols. Columbia, S. C., 1870.

Includes the Congregational, French, Lutheran, and Reformed churches, with many references to the Baptist and English churches. An excellent work, although the arrangement by decades is somewhat confusing. Other books, giving an account of colonial Presbyterianism are: Briggs, American Presbyterianism; Gillett, History of the Presbyterian Church in the United States of America, in two volumes; Hodge, The Constitutional History of the Presbyterian Church in the United States of America, in two volumes; and Webster, A History of the Presbyterian Church in America.

HUGHSON, SHIRLEY C. The Carolina Pirates and Colonial Commerce, 1670–1740. Baltimore, 1894.

Johns Hopkins University Studies in Historical and Political Science, May, 1894, Vol. XII, No. 5.

HUGUENOT Society of America, Proceedings. New York.

Two numbers have thus far been issued: Records of 1883 and 1884, published in 1884, and Records from 1885 to 1888, published in 1889. The first number contains a sketch of the South Carolina Huguenots, by Vedder, and a list of the refugees in South Carolina, by Gaillard. In addition, each number contains several references to South Carolina.

HUMBLE Address of the Right Honorable the Lords Spiritual and Temporal in Parliament assembled, Presented to Her Majesty on Wednesday, March 13, 1705, Relating to the Province of Carolina, and the Petition therein mentioned, With Her Majesty's Most Gracious answer thereunto. London, 1705.

Consists of two folio leaves folded. Reprinted in North Carolina Colonial Records, I, 634–640. Relates to the church act of 1704.

HUMBLE Memorial and Representation of the State and Condition of Your Majesty's Province of South Carolina, from the General Assembly of the said Province, April 9, 1734.

Printed as the fifth appendix in Force's Tracts, Vol. I, No. 5.

HUMBLE Petition of the Rev. Mr. Edward Marston, Minister of the Church of England in Charles Town, in South Carolina, to His Excellency John Lord Granville, Palatine, and the rest of the True and Absolute Lords Proprietors of Carolina. n. p. n. d.

Also printed in Case of Protestant Dissenters, Appendix, pp. 60–65.

HUMPHREYS, DAVID. An Historical Account of the Incorporated Society for the Propagation of the Gospel in Foreign Parts. London, 1730.

Reprinted New York, 1853, from the Church Review, 1851–52. The chapter relating to South Carolina is reprinted in Carroll's Historical Collections, Vol. II. Earlier accounts had been written by Stubbs in 1705 and White Kennett in 1706. French translations by Claude G. de Mothe, at Rotterdam, 1705, 1706, 1708. The annual meeting of the society was held at the parish church of St. Mary-le-Bow, in February. The sermon preached on that occasion was printed after 1705. An appendix to the sermon contained an abstract of the proceedings of the society for the preceding year. South Carolina is mentioned in nearly every report prior to 1768.

IMPARTIAL Account of the Late Expedition against St. Augustine, under General Oglethorpe.

See James Oglethorpe.

IZARD, RALPH, Correspondence of.

See Anne Izard Deas.

JOHNSON, JOSEPH. Traditions and Reminiscences, chiefly of the American Revolution in the South. Charleston, 1851.

Contains four chapters on colonial history.

KING, W. L. Newspaper Press of Charleston. Charleston, 1870.

LA BORDE, MAXIMILIAN. History of the South Carolina College. Columbia, 1859.

Contains remarks on colonial education in South Carolina.

LANIER, SIDNEY. Florida: Its Scenery, Climate, and History, with an Account of Charleston, Savannah, Augusta, and Aiken; a Chapter for Consumptives; Various Papers on Fruit Culture; and a Complete Handbook and Guide. Philadelphia, 1875.

LAUDONNIÈRE, RENÉ. L'Histoire notable de la Floride. Paris, 1586.

Reprinted Paris, 1853. It relates to the voyages of Laudonnière, Ribault, and Gorgues, and the early Huguenot settlements in South Carolina. A translation was printed in Hakluyt's Voyages, III, 319–349, edition of 1600, and III, 384–419, edition of 1812. A Dutch translation appeared in Leyden, 1706, which had been printed in Vol. XVI of Van der Aa's Naaukeurige Versameling der Zee en landreyser, na Oost en West Indien. A part of the account is printed in Charles B. Reynolds's Old St. Augustine, p. 15. St. Augustine, 1885.

[LAURENS, HENRY.] Extracts from the Proceedings of the Court of Vice-Admiralty in Charles Town, South Carolina, in the cause of George Roupell r. The Ship *Ann* and goods, with a few explanatory remarks. To which is subjoined Some General Observations on American Custom-House Officers and Courts of Vice-Admiralty. Charleston, 1768.

[LAURENS, HENRY.] Extracts from the Proceedings of the High Court of Vice-Admiralty in Charles Town upon Six several Informations, adjudged by the Hon. Egerton Leigh, Esq., * * * in the Years 1767 and 1768. To which are subjoined Recapitulation, reflexions arising from a retrospect of a late Case, and some General Observations on American Custom-House Officers. Charleston, 1769.

Based on the preceding. An answer was made by Leigh the following year.

LEDERER, JOHN. Discoveries in Three Several Marches from Virginia to the west of Carolina, and other parts of the Continent; begun in March, 1669, and ended in September, 1670. Translated out of the Latin by Sir William Talbot. London, 1672.

Extracts are given in Hawks's North Carolina, II, 43–53.

[LEIGH, Sir EGERTON.] Considerations on Certain Political Transactions of the Province of South Carolina. London, 1774.

[LEIGH, Sir EGERTON.] The Man Unmasked; or, The World Undeceived In the author of a Late Pamphlet Intitled "Extracts from the Proceedings of the High Court of Vice-Admiralty in Charlestown, South Carolina." Charleston, 1769.

An answer to Laurens's pamphlet.

LETTER from Mr. Edward Marston, a Minister in Carolina, to a Member of the Society in London for Propagation of the Gospel in Foreign Parts. n. p. 1705.

The twelfth appendix in Case of Protestant Dissenters.

LETTER from South Carolina. London, 1710.

Second edition, 1718. Reprinted 1732. Erroneously ascribed by many to Purry. Perhaps the author was John R. Ochs. See North Carolina Colonial Records, IV, 160.

LEVIN, NATHANIEL. Historical Sketch of the Congregation "Beth Elohim," of Charleston.

Printed in the Charleston Year Book for 1883.

LINING, JOHN. Description of the American Yellow Fever at Charles Town, 1748. Philadelphia, 1799.

LINING, JOHN. History of the Yellow Fever. Charleston, 1753.

LITTLE History of St. Andrew's Parish. Charleston, 1889.
A pamphlet written for the purpose of attracting emigration.

LODGE, HENRY CABOT. A Short History of the English Colonies in America. New York, 1881.
Contains two chapters on South Carolina.

LOEBER, EMANUEL C. Auszug der Nachrichten von dem Englischen America, besonders von Carolina und Georgia. Jena, 1750.

LOGAN, JOHN H. A History of the Upper Country of South Carolina. Charleston, 1859.

LONDON MAGAZINE. London.
Contains frequent letters from South Carolina. See, for example, December, 1752, p. 567; July, 1757, pp. 330–332; August, 1761, p. 442 and p. 703; June, 1762, p. 296.

MACKAY, HUGH. Letter concerning the St. Augustine Expedition.
Printed in the Gentleman's Magazine, November, 1740, Vol. X, p. 515.

MANLY, BASIL. A Discourse, Containing Some Fragments of the History of the Baptist Church in Charleston, S. C. Delivered September 23 and 30, 1832. Charleston, 1837.

MAZYCK, ARTHUR. Guide to Charleston, Illustrated. Charleston, 1882. Being a Sketch of the History of Charleston, S. C.

MAZYCK, ARTHUR. Libraries in Charleston and in the Southern States. Washington, 1876.
Pp. 882–892 of Public Libraries in the United States, a special report issued by the United States Bureau of Education.

MCCORD, DAVID J. [Editor.] Statutes at Large.
See Statutes at Large.

MCCRADY, EDWARD, Jr. Education in South Carolina Prior to and During the Revolution. Charleston, 1883.
A paper read before the South Carolina Historical Society, August 6, 1883. An impassioned and in places inaccurate account, intended to refute certain statements made in McMaster's History of the People of the United States. It is published in the fourth volume of the South Carolina Historical Society's Collections; also in a slightly abridged and corrected form in the appendix to Meriwether's History of Higher Education in South Carolina, under the title of Colonial Education in South Carolina.

MERIWETHER, COLYER. History of Higher Education in South Carolina. Washington, 1889.
Published by the United States Bureau of Education as Circular of Information, 1888, No. 3, and Contributions to American Educational History, No. 4. Contains a chapter on colonial education.

METHODS for Improving the Manufacture of Carolina Indigo, submitted to the Consideration of the Carolina Planters. Bath, 1772.

MILLER, A. E. Notices of the Early History of South Carolina. Charleston, 1822.
Printed as an appendix to Miller's reprint of Archdale's Description of South Carolina. It consists of extracts from the Report of Oglethorpe's Expedition to St. Augustine, 1740, an extract from the London Magazine, Vol. XXI, pp. 331, 332, on the slave insurrection of 1730, and a few estimates of population.

MILLIGAN, Dr. A Short Description of the Province of South Carolina, 1763. London, 1770.
Reprinted in Carroll's Historical Collections, Vol. II.

MILLS, ROBERT. Statistics of South Carolina. Charleston, 1826.
A mine of information on local points, relating mainly to first settlers and first things.

MISSILDINE, A. H. An Historical Sketch of the Independent or Congregational Church of Charleston. Boston, 1887.
Reprinted from the Charleston Year Book for 1882. An account of Congregationalism in colonial South Carolina is given in Punchard's History of Congregationalism, Vol. IV, and in the histories of Presbyterianism.

MITCHELL. Present State of Carolina. London, 1740.

MOORE, FRANK. Materials for History. Printed from Original Manuscripts. First series. New York, 1861.
Contains the correspondence of Henry Laurens.

MOORE, JAMES. Letter to the governor of Carolina, containing an account of his expedition against the Spaniards.
Printed in the Boston News, May 1, 1704; reprinted in Carroll's Historical Collections, Vol. II.

MORAGNE, W. C. An Address, Delivered at New Bordeaux, S. C., November 15, 1854, on the Ninetieth Anniversary of the Arrival of the French Protestants at that Place. Charleston, 1857.

MOULTRIE, WILLIAM. Memoirs of the American Revolution, so far as it Related to the States of North and South Carolina and Georgia. New York, 1802.

NEUE Nachricht alter und neuer Merkwürdigkeiten, enthaltend ein vertrautes Gespräch und sichere Briefe von dem Landschafft Carolina und übrigen englischen Pflantz-Städten in Amerika. Zürich, 1734.

NEW and Accurate Account of the Provinces of South Carolina and Georgia.
See James Oglethorpe.

NEW and Most Exact Account of the Fertile and Famous Colony of Carolina.
See John Crafford.

NEW VOYAGE to Georgia, by a Young Gentleman: Giving an Account of his Travels to South Carolina and part of North Georgia. London, 1735.
The second edition, 1737, is reprinted in the Collections of the Georgia Historical Society, Vol. II.

NILES, HEZEKIAH. Principles and Acts of the Revolution in America; or, An Attempt to Collect and Preserve Some of the Speeches, Orations, and Proceedings, with Sketches and Remarks on Men and Things, and Other Fugitive or Neglected Pieces, belonging to the Revolutionary Period in the United States. Baltimore, 1822.
Reprinted, New York, 1876. Contains several important documents relating to South Carolina.

NORRIS, JOHN. The Carolina Calendar for Four Years; beginning 1712 and ending 1716. London, 1711.

[NORRIS, JOHN.] Profitable Advice for Rich and Poor, in a Dialogue, or Discourse between James Freeman, a Carolina Planter, and Simeon Question, a West-Country Farmer, Containing a Description, or True Relation of South Carolina, * * * with Propositions for the Advantageous Settlement of People * * * in that * * * Country. London, 1712.

NUNMEHRO in dem Neuen Welt vergnügt und ohne Heimwehe lebendo Schweitzer, oder Beschreibung des gegenwärtigkeiten Zustands der königlichen englischen Provinz Carolina. Bern, 1734.

O'CALLAGHAN, E. B. [Editor.] Documents Relating to the Colonial History of the State of New York. 11 vols. Albany, 1856–1861.

The collection contains documents relating to all the colonies collectively, with several documents and notes referring to South Carolina alone. Documents in Volumes I and II were obtained in Holland; in Volumes III to IX in London; in Volume X in Paris. Volume XI is an index. Four later volumes have been published, none of which contain any references to South Carolina.

[OGLETHORPE, JAMES.] A Full Reply to Lieutenant Cadogan's Spanish Hireling. London, 1743.

Relates to the St. Augustine expedition of 1740. An attempt to prove Cadogan's statements to be false.

[OGLETHORPE, JAMES.] An Impartial Account of the Late Expedition against St. Augustine, under General Oglethorpe, Occasioned by the Suppression of the Report made by a Committee of the General Assembly in South Carolina; transmitted under the great seal of that Province to their agent in England, in order to be printed. London, 1742.

[OGLETHORPE, JAMES.] A New and Accurate Account of the Provinces of South Carolina and Georgia. London, 1732.

New edition, 1733, which is reprinted in the Collections of the Georgia Historical Society, Vol. I, and in Bruce's Life of General Oglethorpe, chapter 6. The account is taken mainly from Salmon's Modern History, Vol. III. German translation at Göttingen, 1746.

OLD, the, and the New: or, Discourses and Proceedings at the Dedication of the Re-modeled Unitarian Church in Charleston, S. C., Sunday, April 2, 1854. Charleston, 1854.

OLDEN TIMES of Carolina.

See Mrs. E. A. Poyas.

OLDMIXON, JOHN. The British Empire in America. 2 vols. London, 1708.

A second edition with additions, but with a retention of the old phraseology, thus making the work very misleading, appeared in 1741. The chapter on Carolina is reprinted in Carroll's Historical Collections, Vol. II. German translations at Hamburg, 1710 and 1715; at Lemgo, 1744; and Sorau, 1761; Dutch translation at Amsterdam, 1727. It is often attributed to Herman Moll, who prepared the maps only. It is an unsafe book to follow.

O'NEALL, JOHN B. The Annals of Newberry. Charleston, 1859.

O'NEALL, JOHN B. Biographical Sketches of the Bench and Bar of South Carolina. 2 vols. Charleston, 1859.

Contains sketches of Trott and a few other colonial legal lights.

O'NEALL, JOHN B. The Negro Law of South Carolina. Columbia, 1848.

O'NEALL, JOHN B. Slave Laws of the South. New Orleans, 1852.
In De Bow's Industrial Resources, Vol. II. Relates mainly to South Carolina and gives the later colonial laws on slavery.

OUR FOREFATHERS; Their Homes and their Churches.
See Mrs. E. A. Poyas.

PARKMAN, FRANCIS. Pioneers of France in the New World. Boston, 1865.
Later editions. French translation, Paris, 1874; German translation, Stuttgart, 1875. Contains a full account of the early Huguenots in South Carolina.

PARTY Tyranny.
See Daniel De Foe.

PEEP, a, into the Past.
See Mrs. E. A. Poyas.

PERRY, WILLIAM S., and HAWKS, FRANCIS L. Documentary History of the Protestant Episcopal Church in the United States of America. South Carolina. New York, 1862.
See note under Francis L. Hawks.

PINCKNEY, ELIZA LUCAS. Journal and Letters. Wormsloe (Savannah), 1850.
These letters were written from South Carolina between the years 1739 and 1762 and contain several historical statements. Only nineteen copies were printed.

PORCHER, FREDERICK A. Historical and Social Sketch of Craven County, S. C. Charleston, 1852.
Reprinted in Dubose and Porcher's Contributions to the History of the Huguenots of South Carolina. New York, 1887.

PORCHER, FREDERICK A. A Memoir of Gen. Christopher Gadsden. Charleston, 1878.
Also published in the fourth volume of the Collections of the South Carolina Historical Society.

POWNALL, THOMAS. The Administration of the Colonies. London, 1764.
Later editions in one volume, 1765, 1766, 1768; in two volumes, 1774, 1777. The title pages and the contents vary greatly in the different editions. Pownall had been governor of several colonies at different times and was therefore well acquainted with colonial customs. The title page states that he had been governor of South Carolina. The statement is not exactly correct. He had been appointed governor of South Carolina in 1762, but had never served in that capacity. Many of his examples, however, were drawn from South Carolina.

[POYAS, Mrs. E. A.] Olden Times of Carolina. Charleston, 1855.

[POYAS, Mrs. E. A.] Our Forefathers; Their Homes and their Churches. Charleston, 1860.

[POYAS, Mrs. E. A.] A Peep into the Past. Charleston, 1853.
These three books are signed "The Ancient Lady of Charleston."

PRIMER, SYLVESTER. The Huguenot Element in Charleston's Pronunciation. Baltimore, 1889.
Printed in the Transactions and Proceedings of the Modern Language Association of America, Vol. IV, pp. 214-247. Contains several extracts from early writers in relation to the Huguenots.

PROFITABLE Advice for Rich and Poor.
See John Norris.

PROPOSALS for Clearing Land in Carolina. London, 1682.

PUBLIC Laws of South Carolina.
See John F. Grimké.

PURRY, JEAN PIERRE. A Description of the Province of South Carolina. Drawn up at Charles Town, September, 1731.

This is a translation of Description abrégée de l'état présent de la Caroline Méridionale, published at Neufchatel, 1730. The translation was printed in the Gentleman's Magazine for August, September, and October, 1732, pp. 894–896, 969, 970, and 1017–1019. Reprinted in Carroll's Historical Collections, Vol. II, and in Force's Tracts, Vol. II, No. 11.

PURRY, J. P. Mémoire présenté à sa Gr. Mylord Duc de Newcastle sur l'État Présent de la Caroline, 18 Juillet, 1724. London, 1724.

A translation was privately printed by Charles C. Jones, jr., at Augusta, Ga., 1880. In 1722 Purry had obtained a grant of land in South Carolina, and his pamphlets were written for the purpose of obtaining emigrants to settle there.

RAMAGE, BURR J. Local Government and Free Schools in South Carolina. Baltimore, 1883.

Printed in the Johns Hopkins University Studies in Historical and Political Science, Vol. I. No. 12. Contains several references to the colonial period.

RAMSAY, DAVID. The History of the Independent or Congregational Church in Charleston, S. C., from its Origin till the Year 1814. Philadelphia, 1815.

RAMSAY, DAVID. The History of the Revolution of South Carolina; from a British Province to an Independent State. 2 vols. Trenton, N. J., 1785.

Reprinted, London, 1787; French translation at Paris, 1787 in two volumes; 1796 in five volumes. Later editions at Charleston, 1808, and Newberry, S. C., 1856.

RAMSAY, DAVID. The History of South Carolina. 2 vols. Charleston, 1808.

Reprinted, Newberry, S. C., 1858 in one volume. This is the standard history of South Carolina. Unfortunately, it is based too much upon Hewatt, who is followed in many places line for line.

RAMSAY, DAVID. A Review of the Improvements, Progress, and State of Medicine in the Eighteenth Century. Charleston, 1801.

Read January 1, 1801, before the Medical Society of South Carolina. The last pages relate to South Carolina.

RAMSAY, DAVID. A Sketch of the Soil, Climate, Weather, and Diseases of South Carolina. Charleston, 1796.

RAVENEL, DANIEL. [Compiler.] Liste des Français at Suisse. New York, 1888.

A list of refugees in South Carolina who desired naturalization in 1696.

RAYNAL, L'Abbé THOMAS GUILLAUME FRANÇOIS. Histoire Philosophique et Politique des Etablissemens et du Commerce des Européens dans les deux Indes. 4 vols. Amsterdam, 1770.

This book was very popular, and before the end of the century editions and translations consisting of from three to twenty-two volumes each had been printed at Geneva, La Hague, Neufchatel, Avignon, London, Paris, Maestricht, Madrid, Edinburgh, Dublin, Glasgow, Aberdeen, and Hanover. South Carolina is very fully treated generally in the last volume.

RECK, Commissary VON. An Extract of His Journals. London, 1734.

Reprinted in Force's Tracts, Vol. IV, No. 5. German translation at Halle, 1774, and Hamburg, 1777. Reck gives an account of his experiences in passing through South Carolina to Georgia.

REPORT of the Board of Agriculture.

See Harry Hammond.

REPORT of the Committee appointed to examine into the Proceedings of the People of Georgia, with Respect to the Province of South Carolina and the Disputes subsisting between the two colonies. Charleston, 1736.

REPORT of the Committee appointed by the General Assembly of South Carolina in 1740 on the St. Augustine Expedition under General Oglethorpe. Charleston, 1740.

Reprinted in the fourth volume of the collections of the South Carolina Historical Society, 1887, with notes by J. J. Pringle Smith. The introduction of the report is reprinted in Carroll's Historical Collections. A few extracts from the report are reprinted in Miller's Appendix to Archdale's Description of South Carolina. The suppression of this report called forth General Oglethorpe's pamphlet.

REPORT of the Committee of the Commons House of Assembly of the Province of South Carolina on the state of the paper currency of the said province. London, 1737.

REPORT of the Committee of the House of Assembly of the Province of South Carolina appointed to enquire into the causes of the disappointment of success in the late expedition against St. Augustine, under General Oglethorpe. Charleston, 1742.

Folio. An edition in octavo appeared in 1743.

REPRESENTATION and Address of Several Members of this Present Assembly, Returned for Colleton County, and Other Inhabitants of this Province to the Right Honorable John Grenville, esq.; and to the Rest of the True and Absolute Lords and Proprietors of the Province of Carolina. n. p. 1705.

Reprinted in the Appendix of the Case of Protestant Dissenters, pp. 29–33. A protest against the church act of 1704.

REPRESENTATION of the Board of Trade Relating to the Laws made, Manufactures Set up, and Trade Carried on, in His Majesties Plantations in America. London, 1734.

REPRESENTATION of the Lords Commissioners for Trade and Plantations to the King upon the State of His Majesties Colonies and Plantations on the Continent of North America. London, 1721.

The manuscript copy is in the Boston Public Library. Reprinted in O'Callaghan's New York Colonial Documents, Vol. V, pp. 592–630. The parts relating to Carolina are reprinted in Saunders's Colonial Records of North Carolina, Vol. II, pp. 418–425. Both representations were made at the request of Parliament, and consist of accounts of each colony.

REQUIER, A. J. The Old Sanctuary: A Romance of the Ashley. Boston, 1846.

A novel, with the scene laid on the Ashley in colonial days.

RIBAULT, JEAN. The whole and true discoverie of Terra Florida, &c. London, 1563.

Translated from the French. Reprinted in Hakluyt's Principal Navigations, Voiages, and Discoveries of the English Nation, Vol. III, 308–319, edition of 1600; Vol. III, 357–371, edition of 1812; Vol. XIII, 417–444, edition of 1889. An account of Ribault's second voyage in 1565 is printed in Hakluyt, III, 349–356 (1600); III, 419–427 (1812); XIII, 508–524 (1889). Reprinted in French's Historical Collections of Louisiana, second series, first volume.

RICE, WILLIAM. A Digested Index of the Statute Law of South Carolina. Charleston, 1838.

The part covering the period prior to 1790 is taken bodily from the index to Grimké's edition of the Public Laws of South Carolina. The part covering the years 1790 to 1836 was very carefully prepared by Rice personally.

RIVERS, WILLIAM J. A catechism of the History of South Carolina. Charleston, 1850.

[RIVERS, W. J.]. A Sketch of the History of South Carolina to the Close of the Proprietary Government, 1719. With an Appendix containing many valuable records. Charleston, 1856.

A carefully prepared account based on original material, much of which is given in full in the Appendix.

RIVERS, W. J. A chapter in the Early History of South Carolina. Charleston, 1874.

An account of the Revolution of 1719, followed by an Appendix containing many valuable documents.

RIVERS, W. J. The Carolinas.

Printed in the fifth volume of Winsor's Narrative and Critical History of America, 285–334, Boston, 1887; followed by a critical essay and notes on the early history of the Carolinas, by Justin Winsor. This sketch covers the colonial period of both Carolinas and is accompanied by several illustrations.

RIVERS, W. J. The Carolina Regiment in the Expedition against St. Augustine in 1740. Charleston, 1859.

Printed in Russell's Magazine, September, 1859.

√ROYAL Commission on Historical Manuscripts, Reports. 13 vols. London, 1874–1892.

In 36 parts. These reports enumerate papers in the possession of private institutions and families, giving abstracts of the more important. Documents relating to South Carolina are found in Reports III, IV, V, and XI, the most important being contained in the Shelburne manuscripts in the fifth report and the Townshend manuscripts in the fourth part of the eleventh report.

RULES of the Fellowship Society. Charleston, 1762.

Many later editions.

RULES of the Incorporated South Carolina Society. Charleston, 1795.

6th edition. The preface contains a very brief history of the society.

RULES of the St. Andrew's Club, Charles Town, South Carolina. London, 1750.

RUSSELL'S MAGAZINE. Charleston, 1859.

An Account of the invasion made by the French and Spaniards upon Carolina * * * in 1706 is printed in the number for August, 1859, pp. 458–464. Rivers's Carolina Regiment in 1740 is printed in the number for September, 1859.

SAINSBURY, W. NOËL. Calendar of State Papers, Colonial Series, America and West Indies, in the State Paper Department of Her Majesty's Public Record Office. 4 vols. London, 1860, 1880, 1889, 1893.

These volumes cover the years 1574–1676. The state paper office contains all British records and documents not needed for current use. Abstracts of these documents have been published since 1856. The four volumes in the America and West Indies Series contain many documents relating to early South Carolina. A few documents relating to colonial South Carolina are also to be found in the Calendars of Home Office Papers of the Reign of George III, covering the years √1760–1772, edited by Joseph Redington and Richard A. Roberts, 3 vols., 1878–1881.

SAINSBURY, W. NOEL. The French Settlement in Abbeville County, South Carolina.
Printed in the second volume of the Collections of the South Carolina Historical Society, with documents.

SANDFORD, ROBERT. The Port Royal Discovery, Being the Relation of a Voyage on the Coast of the Province of Carolina, 1666. London, 1666.
Reprinted in the Charleston Year Book for 1885 and in Saunders's North Carolina Colonial Records, Vol. I, pp. 118–139.

SASS, G. H. A sketch of the Institutions, Government, and Laws of South Carolina.
Printed in Hammond's Report, pp. 421–444.

SAUNDERS, WILLIAM L. [Editor.] The Colonial Records of North Carolina. 10 vols. Raleigh, 1886–1890.
Gives in full all records relating to North Carolina and many relating to South Carolina, taken from the state paper office, London, North Carolina archives, etc. The first two volumes contain many documents relating to South Carolina. Vol. I, pp. 118–139 contains Sandford's Relation; pp. 634–640, the Humble Address of the Lords to the Queen in 1705. Vol. II, pp. 891–923 contains De Foe's Party Tyranny.

SCHOOLCRAFT, Mrs. HENRY R. The Black Gauntlet: A Tale of Plantation Life in South Carolina. Philadelphia, 1861.
A novel, with several references to the colonial period.

SCOTCH-IRISH Society of America. Proceedings of the Annual Congresses. Cincinnati, 1889.
Later reports have been issued from Nashville. All refer to South Carolina. Fleming's Scotch-Irish Settlers in South Carolina, and Henry's Scotch-Irish of the South are in the report for 1889.

SETTLEMENTS of Coligny.
See W. G. Simms.

SHECUT, J. L. E. W. Medical and Philosophical Essays. Charleston, 1819.
Consists of three medical essays and Topographical, Historical, and other Sketches of the city of Charleston, from its first Settlement to the Present Period. Shecut had issued a book entitled Flora Caroliniensis in 1806.

SHORT Sketch of Charleston. n. p. 1887.
Issued by the Atlantic Coast Line. Contains several references to the colonial period.

SHUCK, L. H. Historical Sketch of the First Baptist Church of Charleston.
Printed in the Charleston Year Book for 1881.

SIMMS, WILLIAM GILMORE. The Geography of South Carolina. Charleston, 1843.

SIMMS, W. G. History of South Carolina. Charleston, 1840.
Closes practically with the year 1783. Second edition, 1842. Third and fourth editions were published in New York, 1860 and 1866, in a revised and larger form.

SIMMS, W. G. The Life of Francis Marion. New York, 1844.
Several later editions.

SIMMS, W. G. The Life of Nathanael Greene. New York, 1849.
Also later editions.

[SIMMS, W. G.] The Lily and the Totem; or, The Huguenots in Florida. A Series of Sketches, Picturesque and Historical, of the Colonies of Coligni in North America. New York, 1850.
Many later editions.

[SIMMS, W. G.] Rombert: A Tale of Carolina. 2 vols. New York, 1835.
A novel, 1700–1720.

[SIMMS, W. G.] The Settlements of Coligny. New York, 1845.
A lecture in a series delivered before the Historical Society of Georgia, entitled The Epochs and Events of American History, as suited to the Purposes of Art in Fiction. Printed in Views and Reviews in American Literature, History, and Fiction. First series. Reprinted, London. 1846.

SIMMS, W. G. South Carolina in the Revolutionary War. Charleston, 1853.
Three articles in the Southern Quarterly Review, containing many references to the colonial period.

SIMMS, W. G. The Yemassee: A Romance of Carolina. 2 vols. New York, 1835.
Many later editions. A novel founded upon the Indian War of 1716. Many of Simms's other novels and poems refer to colonial South Carolina.

Sketch of the Resources and Industries of South Carolina. Charleston, 1883.
A pamphlet containing many references to the colonial period, published by the State department of agriculture. Compiled mainly from the very full report of 1883, which had been edited by Harry Hammond.

SMITH, H. A. M. Administration of Justice in South Carolina.
Printed in the Charleston Year Book for 1885.

SMITH, J. J. PRINGLE. Charleston, S. C., St. Philip's Church. Special services held May 12 and 13, 1875, in commemoration of the planting of the Church of England in South Carolina. Charleston, 1876.

SMITH, J. J. PRINGLE. Government of the City of Charleston, 1682–1882.
Printed in the Charleston Year Book for 1881.

SMITH, J. J. PRINGLE. Sketch of the History of Charleston.
Printed in the Charleston Year Book for 1880.

SMITH, JOSIAH. The Burning of Sodom, with its Moral Causes, Improv'd in a Sermon. Boston and Charleston, 1741.
The object of this sermon was to show that Charleston had been visited by the great fire of 1740 because of the great moral wickedness of the inhabitants.

SOCIETY for the Propagation of the Gospel in Foreign Parts. An Abstract of the Proceedings of the.
The annual meeting of the society was held at the parish church of St. Mary-le-Bow in February. The sermon preached on that occasion was printed after 1705. An appendix to the sermon contained an abstract of the proceedings of the society for the preceding year. South Carolina is mentioned in nearly every report.

SOME Observations on the Two Campaigns against the Cherokee Indians in 1760 and 1761. Charleston, 1762.

SOUTH CAROLINA Historical Society, Collections. 4 vols. Charleston, 1857, 1858, 1859, and 1888.
The first three volumes contain the annual addresses before the society; Records of the South Carolina Council of Safety; many brief abstracts of the earlier documents in the state paper office, London, relating to South Carolina; documents relating to the settlement of the French in Abbeville County, with an introduction by W. Noël Sainsbury. The fourth volume contains the Report on the St. Augustine Expedition in 1740; Porcher's Memoir of General Gadsden; McCrady's Education in South Carolina, and several addresses made before that society since the publication of the third report.

SOUTH CAROLINA Historical Society. Report of the committee in the matter of procuring transcripts of the Colonial Records of this State from the London record office. Charleston, 1891.

SOUTH CAROLINA. Report of the Board of Agriculture.
See Harry Hammond.

SOUTHERN LITERARY MESSENGER. Richmond, Va.
The number for March, 1845, pp. 138–143, contains an article on South Carolina, written by an English traveler just before the Revolution. The article is also printed in the Historical Magazine for November, 1865.

SOUTHERN QUARTERLY REVIEW. New Orleans.
The number for July, 1844, pp. 130–163, contains an article on the Colonial Era of South Carolina.

STATUTES AT LARGE of South Carolina. Columbia, 1836–1840.
Vols. I–VI were edited by Thomas Cooper; Vols. VII–X by David J. McCord. Vol. I includes all charters and constitutional acts; Vols. II–VI, all acts not otherwise classified; Vol. VII, acts relating to Charleston, courts, slaves, and rivers; Vol. VIII, acts relating to corporations and the militia acts passed after 1793; Vol. IX, acts relating to roads, bridges, and ferries, and the militia acts passed prior to 1793; Vol. X, an index and a chronological list of all acts of the assembly. The classification is not accurate, omnibus bills are many, cross references are wanting, many acts are omitted. All private acts are omitted, but are enumerated in the appendix to the tenth volume. Appendices to Vols. VI and IX contain acts stated in earlier volumes to be lost. Each volume contains a meager index. Subsequent volumes have been edited by the various secretaries of state. The years covered by the succeeding volumes have been as follows: XI, 1839–1849; XII, 1850–1860; XIII, 1861–1866; XIV, 1868–1871; XV, 1871–1874; XVI, 1875–1878; XVII, 1879–1881; XVIII, 1882–1884; XIX, 1885–1887; XX, 1888–1891; XXI, 1892—. Vols. XI–XIV have been reprinted. The acts of the assembly were numbered consecutively from 1682–1866, since which time they have been numbered consecutively by volumes. The numbers in this collection do not always agree with those given by Trott or Grimké, nor with the numbers on the original acts. Extracts of the laws of colonial South Carolina are to be found in Niles's Principles and Acts, Goodell's American Slave Code, and Dillon's Oddities of Colonial Legislation in America.

STOKES, ANTHONY. A View of the Constitution of the British Colonies in 1776. London, 1783.
Contains copies of instructions and commissions to all colonial officers. His examples are taken mainly from South Carolina, Georgia, and the West India Islands.

SUCCESSES of the English in America, by the march of Colonel Moore, governor of Carolina, and his taking the Spanish Town of St. Augustine, near the Gulph of Florida, and by our English Fleet sailing up the River Darien, and marching to the Gold Mines at Santa Cruz de Cana near Santa Maria. London, 1711.

SUMMARY of Church Discipline, showing the Qualifications and Duties of the Officers and Members of a Gospel Church, by the Baptist Association in Charleston, South Carolina. Wilmington, 1783, and Charleston, 1794.

THOMAS, ISAIAH. The History of Printing in America; with a Biography of Printers and an Account of Newspapers. 2 vols. Worcester, 1810.
Reprinted by the American Antiquarian Society, 1874, with a bibliography of ante Revolutionary publications.

THOMPSON, W. T. Historical Sketch of the First Presbyterian Church of Charleston.
Printed in the Charleston Year Book for 1882.

T[illegible] JOSHUA W. An Oration, Delivered at the Celebration of the First Centennial Anniversary of the South Carolina Society, March 28, 1837. Charleston, 1837.

TRENHOLM, W. L. The Centennial Address before the Charleston Chamber of Commerce, February 11, 1884. Charleston, 1884.

TRENHOLM, W. L. History and Present Condition of Transportation in South Carolina.

Printed in Hammond's Report, pp. 611-640. Speaks of the colonial roads, canals, and rivers.

TROTT, NICHOLAS. [Compiler.] The Laws of the British Plantations in America, Relating to the Church and the Clergy, Religion and Learning. London, 1721.

TROTT, NICHOLAS. [Compiler.] The Laws of the Province of South Carolina. 2 vols. Charleston, 1736.

This is the first collection of the laws of South Carolina. Volume I contains such acts passed prior to 1728 as were in force at the time of publication, with the titles of all expired or repealed acts except those passed prior to 1682. Volume II included such acts passed between 1728 and 1736 as were still in force, the charter of 1665, the fundamental constitutions, and the so-called temporary laws of the proprietors. Trott had been chief justice of South Carolina for several years and made his compilation from the original documents.

TRUE STATE of the Case between the Inhabitants of South Carolina and the Lords Proprietors of that Province. London, 1725.

Several pamphlets were issued with similar titles between the years 1721 and 1729 relating to the revolution of 1719 and the sale of Carolina by the proprietors to the King.

TWO CHARTERS, Granted by King Charles II to the Proprietors of Carolina, with the First and Last Fundamental Constitutions of that Colony. London, n. d.

UNITED STATES, Report of the Commissioner of Education, 1876. Washington, 1878.

Pages 362-368 contain an historical sketch of the State school system of South Carolina; including the colonial period.

VEDDER, CHARLES S. Historical Sketch of the French Protestant Church of Charleston.

Printed in the Charleston Year Book for 1885.

VEDDER, C. S. The Huguenots of South Carolina and their Churches.

A paper read before the Huguenot Society of America April 24, 1884. Printed in the Proceedings of the Society, Vol. I, No. 1, pp. 31-49.

VIATOR. Charleston's Appreciation of Her Early History. New York.

In Magazine of American History, July, 1883, Vol. XI, pp. 60-64. Contains an account of the statue erected to William Pitt at Charleston in 1770, etc.

VIEW of the Trade of South Carolina.

See Francis Yonge.

WALLACE. History of the Williamsburgh Church.

WALTER, THOMAS. Flora Caroliniana. 1788.

WEBER, JOHN L. Fifty Lessons in the History of South Carolina. Boston, 1891.

A school history of South Carolina.

WEEKS, STEPHEN B. John Archdale and Some of his Descendants. New York, 1893.

In Magazine of American History, February, 1893, pp. 157-162.

WESTON, PLOWDEN C. J. [Editor]. Documents Connected with the History of South Carolina. London, 1856.

Printed for private distribution. Contains Ingram's Land Travels, 1568–1569. letters of Capt. Thomas Young to Sir Francis Windebank, 1634; Glen's Answers to the Lords of Trade; letters from Richard Cumberland relating to the provost marshalship of South Carolina, and that part of De Brahm's account that relates to South Carolina, entitled Philosophico-Historico-Hydrogeography of South Carolina, Georgia, and East Florida.

WHITNEY, EDSON L. Government of the Colony of South Carolina. Baltimore, 1895.

Printed in the Johns Hopkins University Studies in Historical and Political Science, Vol. XIII, No. 1.

[WILSON, SAMUEL.] An Account of the Province of Carolina in America; together with an Abstract of the Patent, and several other necessary and useful Particulars to such as have thoughts of Transporting themselves thither. London, 1682.

Reprinted, without the Abstract, in Carroll's Historical Collections, Vol. II.

WINSOR, JUSTIN. [Editor.] Narrative and Critical History of America. 8 vols. Boston, 1886–1889.

Vol. V, pp. 285–334, contains an article on the Carolinas by W. J. Rivers, followed by a critical essay and note on the later history of the Carolinas by the editor.

WOOLSON, CONSTANCE F. Up the Ashley and Cooper.

In Harper's Monthly, December, 1875, pp. 1-23. Illustrated. A description, containing many references to colonial South Carolina.

YEADON, RICHARD. History of the Circular Church. Charleston, 1853.

Reprinted with additions from the Charleston Courier, July 16, 1853.

[YONGE, FRANCIS.] A Narrative of the Proceedings of the People of South Carolina, in the Year 1719. London, 1726.

Reprinted in Carroll's Historical Collections, Vol. II, and in Force's Tracts, Vol. II, No. 10. A full account of the revolution of 1719.

[YONGE, F.] View of the Trade of South Carolina, with Proposals Humbly Offered for Improving the Same. London, 1722.

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